

**ADVISORY COMMITTEE
ON
BANKRUPTCY RULES**

**New York, NY
April 2-3, 2013**

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December 28, 2012

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December 28, 2012

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of April 2 – 3, 2013

New York, New York

Introductory Items

1. Greetings; welcome to new member Jill Michaux, Esq., and new liaison representatives Roy T. Englert, Jr., Esq., and Judge Erithe A. Smith; and recognition of the service of former committee member Jerry Patchan. (Judge Wedoff)
2. Approval of minutes of Portland meeting of September 20 - 21, 2012. (Judge Wedoff)
 - Draft minutes.
3. Oral reports on meetings of other committees:
 - (A) January 2013 meeting of the Committee on Rules of Practice and Procedure. (Judge Wedoff and Professor Gibson)
 - Draft minutes of the Standing Committee meeting of January 3 – 4, 2013.
 - (B) January 2013 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Smith and Judge Wedoff)
 - (C) November 2012 meeting of the Advisory Committee on Civil Rules, including the Civil Rules Committee's approval of an amendment of Civil Rule 6(d) for future publication. (Judge Harris)
 - (D) October 2012 meeting of the Advisory Committee on Evidence. (Judge Wizmur)
 - (E) September 2012 meeting of the Advisory Committee on Appellate Rules. (Judge Jordan)
 - (F) Bankruptcy Next Generation of CM/ECF Working Group. (Judge Perris)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Harris, Professor Gibson, and Professor McKenzie)
 - (A) Oral report concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that

courts may require a minimum initial payment with requests to pay filing fees in installments. (Judge Harris and Professor Gibson)

- (B) Oral report concerning Suggestion 12-BK-B by Matthew T. Loughney (on behalf of the Bankruptcy Noticing Working Group) to amend Rule 2002(f)(7) to require notice of the confirmation of the debtor's chapter 13 plan. (Judge Harris and Professor McKenzie)
 - (C) Recommendation concerning Suggestion 12-BK-D by Judge S. Martin Teel, Jr., to amend Rule 7001(1) as it concerns compelling the debtor to deliver the value of property to the trustee. (Judge Harris and Professor Gibson)
 - Memo of March 9, 2013, by Professor Gibson.
 - (D) Oral report concerning Comment 11-BK-12 by Judge Frank regarding the negative notice procedure for objections to claims in the proposed amendment to Rule 3007 that was published (and withdrawn). (Judge Harris and Professor Gibson)
5. Report by the Chapter 13 Form Plan Working Group. (Judge Perris, Mr. Kilpatrick, Professor McKenzie)
- Recommendation by the Subcommittees on Consumer Issues and Forms concerning adopting a national chapter 13 form plan and amending Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 in connection with adopting a form plan. (Mr. Kilpatrick and Professor McKenzie)
- Memo of March 15, 2013, by Professor McKenzie.
 - Proposed form plan, Exhibits A and B, and Committee Note.
 - Discussion drafts of forms for adequate protection payments.
 - Proposed rules amendments and Committee Notes.
6. Joint Report by the Subcommittees on Consumer Issues and Forms. (Judge Harris, Judge Perris, Professor Gibson, and Professor McKenzie)
- (A) Status report on mortgage rules and forms amendments discussed at the mini-conference in Portland, including requiring a detailed loan history and amending Rule 9009 to specify the extent to which Official Forms may be modified. (Judge Perris, Professor Gibson)
 - Memo of March 12, 2013, by Professor Gibson.
 - (B) Recommendation concerning Suggestion 11-BK-N by David S. Yen for a rule and form for applications to waive fees other than filing fees, under 28 U.S.C.

§ 1930(f)(2) and (f)(3). (Judge Harris and Professor Gibson)

- Memo of March 10, 2013, by Professor Gibson.

7. Report by the Subcommittee on Forms and the Forms Modernization Project. (Judge Perris, Professor Gibson, and Mr. Myers)

(A) Report on the status of the Forms Modernization Project and recommendation concerning publication of the remaining new individual forms developed by the project, including revision of the exemption schedule as a result of the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). (Judge Perris, Professor Gibson, and Mr. Myers)

- Memo by Judge Perris will be distributed separately.
- Proposed new Official Forms B101, B101AB, B102, B104, B106 – Summary, B106A, B106B, B106C, B106D, B106E, B106F, B106-Declaration, B107, B112, B119, B318, B423, and B427; Committee Notes; and Instructions will be distributed separately.

(B) Recommendation concerning comments received on the published amendments to Official Forms B3A, B3B, B6I, and B6J. (Judge Perris and Professor Gibson)

- Memo of March 15, 2013, by Judge Perris concerning comments on published amendments to Official Forms B3A, B3B, B6I, and B6J.
- Memo of February 28, 2013, by Professor Gibson with summaries of comments on published amendments to Official Forms B3A, B3B, B6I, and B6J, and general comments on the Forms Modernization Project.
- Proposed amendments to Official Forms B3A, B3B, B6I, and B6J; Committee Notes; and Instructions.

(C) Recommendation concerning comments received on the published amendments to Official Forms B22A-1, B22A-2, B22B, B22C-1, and B22C-2. (Judge Wedoff and Professor Gibson)

- Memo of March 17, 2013, by Judge Wedoff concerning recommendations on comments on the published amendments.
- Memo of March 17, 2013, by Judge Wedoff with summaries of comments on published amendments to Official Forms B22A-1, B22A-2, B22B, B22C-1, and B22C-2.

(D) Alternative proposal by Judge Harris and Ms. Michaux to reletter proposed new Forms B106A, B106B, B106C, B106D, B106E, B106F, B106G, and B106H. (Judge Harris and Ms. Michaux)

- Memo of March 11, 2013, by Judge Harris and Ms. Michaux.
- (E) Report on automatic dollar adjustments to Official Forms B1, B6C, B6E, B7, B10, B22A, and B22C and Director’s Procedural Forms B200 and B283 on April 1, 2013, to conform to the dollar adjustments in the Bankruptcy Code, as provided in section 104(a) of the Code. (Mr. Myers)
- Memo of February 26, 2013, by Mr. Myers.
 - The revised forms are posted on the pending forms changes page on the Judiciary website at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>.
8. Report by the Subcommittee on Business Issues. (Judge Wizmur and Professor McKenzie)
- Recommendation concerning comments received on published amendments to Rules 7008, 7012, 7016, 9027, and 9033 which were proposed in response to the Supreme Court’s decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). (Judge Wizmur and Professor McKenzie)
- Memo of March 10, 2013, by Professor McKenzie.
9. Report by the Subcommittee on Privacy, Public Access, and Appeals. (Judge Jordan and Professor McKenzie)
- (A) Recommendation concerning comments received on published amendments to Rules 8001 – 8028, the proposed revision of the bankruptcy appellate rules, and Rules 9023 and 9024, amended to refer to the procedure in proposed new Rule 8008 governing indicative rulings. (Judge Jordan and Professor Gibson)
- Memo by Professor Gibson will be distributed separately.
 - Proposed amendments to Rules 8001 – 8028 and Rules 9023 and 9024, and Committee Notes will be distributed separately.
- (B) Recommendation by Judge Perris and Professor Gibson concerning revising and renumbering Official Form B17A, Notice of Appeal, to include an election by the appellant to have an appeal heard by the district court; adopting new Form B17B, Statement of Election by Appellee(s), and adopting new Form 17C, Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2). (Judge Perris and Professor Gibson).
- Memo of March 10, 2013, by Professor Gibson.
 - Proposed Forms B17A, B17B, and 17C, and Committee Notes.

10. Report by the Subcommittee on Technology and Cross Border Insolvency. (Mr. Baxter and Professor Gibson)

Recommendation concerning adopting a bankruptcy rule establishing standards for electronic signatures. (Mr. Baxter and Professor Gibson)

- Memo of March 13, 2013, by Professor Gibson.
- (Appendix I) Revised report of February 22, 2013, by Dr. Johnson.

11. Recommendations concerning comments received on published amendments to Rules 1014(b), 7004(e), 7008(b), and 7054. (Judge Wedoff, Professor Gibson, and Professor McKenzie)

- Memo by Professor Gibson concerning comments on Rule 1014(b) will be distributed separately.
- Memo of March 13, 2013, by Professor McKenzie concerning comments on Rule 7004(e).
- Memo of March 13, 2013, by Professor Gibson concerning comments on Rules 7054 and 7008(b).

12. Oral report by the Subcommittee on Attorney Conduct and Health Care. (Judge Jonker)

Discussion Items

13. Oral report on Suggestion 13-BK-A by David W. Ostrander to include the debtor's age on the Statement of Financial Affairs or the Schedules of Assets and Liabilities. (Judge Wedoff)
14. Oral report on Suggestion 13-BK-B by Judges Eric L. Frank and Bruce I. Fox to amend Form B1, the Voluntary Petition, to include checkboxes for the documents section 1116(1) of the Bankruptcy Code requires small business debtors to file. (Judge Wedoff)
15. Oral report on Suggestion 12-BK-M by Judge Scott W. Dales to amend Rule 2002(h) to mitigate the cost of giving notice to creditors who have not filed proofs of claim. (Judge Wedoff)
16. Oral report on Suggestion 13-BK-C by the American Bankruptcy Institute's Task Force on National Ethics Standards to amend Rule 2014 to specify "Relevant Connections" which must be described in the verified statement accompanying an application to employ professionals. (Judge Wedoff)

17. Oral report on Judge William G. Young's suggestion to abolish Bankruptcy Appellate Panels (BAPs) and to assign bankruptcy appeals from courts with high caseloads to courts with low caseloads. (Judge Wedoff)

- Judge Young's letter of November 30, 2012, to Judge David Bryan Sentelle, the chair of the Executive Committee of the Judicial Conference at that time.

Information Items

18. Oral report on the status of bankruptcy-related legislation. (Judge Wedoff, Professor Gibson, and Mr. Wannamaker)

19. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code. (Professor Gibson)

20. *Bull Pen.* (Mr. Wannamaker):

Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7) which would authorize providers of financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting.

21. Rules Docket. (Mr. Wannamaker)

22. Future meetings: Fall 2013 meeting, September 24 – 25, in Minneapolis. Possible locations for the spring 2014 meeting.

23. New business.

24. Adjourn.

TAB 1

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Greetings; Introduction of new member and liaison representatives; and Recognition of service

Item 1 will be an oral report.

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TAB 2

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 20 - 21, 2012
Portland, Oregon

(DRAFT MINUTES)

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan (by telephone)
District Judge Karen Caldwell
District Judge Jean Hamilton
District Judge Robert James Jonker
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison (by telephone)
Michael St. Patrick Baxter, Esquire
Richardo I. Kilpatrick, Esquire
J. Christopher Kohn, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Troy A. McKenzie, assistant reporter
Circuit Judge Edward Leavy, former chair
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Chief Bankruptcy Judge Pamela Pepper, Eastern District of Wisconsin
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Associate General Counsel, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Jonathan Rose, Rules Committee Support Officer, Administrative Office of the U.S. Courts (Administrative Office)
Benjamin Robinson, Administrative Office
James H. Wannamaker, Administrative Office
Scott Myers, Administrative Office
Molly Johnson, Federal Judicial Center
Debra L. Miller, Chapter 13 Trustee, South Bend, IN

Raymond J. Obuchowski, Esquire, on behalf of the National Association of
Bankruptcy Trustees
Habbo G. Fokkens, Senior Counsel, Law Division, Wells Fargo

Introductory Items

The Chair asked participants to introduce themselves, and then he announced that this would be Mr. Rao's last meeting. He thanked Mr. Rao for his six years of service to the Committee and in particular for his stewardship of the model chapter 13 plan that was being presented to the Committee at this meeting.

2. Approval of minutes of Phoenix meeting of March 29 - 30, 2012.

The Committee approved the Phoenix minutes with several minor changes.

3. Oral reports on meetings of other committees.
 - (A) June 2012 meeting of the Committee on Rules of Practice and Procedure, including approval of the amendments to Civil Rules 37 and 45, which are scheduled to take effect on December 1, 2013.

The Chair said the Standing Committee adopted all the proposals put forth by the Advisory Committee. With respect to the pending amendments to Civil Rules 37 and 45, the Reporter said that no changes in the bankruptcy versions would be necessary. In response to a question about e-filing, the Reporter added that the Advisory Committee had been encouraged to move forward in its consideration of rules governing the use of electronic signatures for bankruptcy filings.

- (B) June 2012 meeting of the Committee on the Administration of the Bankruptcy System.

The Chair said that the primary focus of the June meeting of the Bankruptcy Administration Committee was cost containment and the reduction of funding for bankruptcy courts. He said bankruptcy courts were being encouraged to pursue shared services with district courts in order to deal with reduced funding.

- (C) Upcoming November 2012 meeting of the Advisory Committee on Civil Rules.

Judge Harris said that he would report on the November 2012 Civil Rules meeting when the Advisory Committee meets in the spring.

- (D) April 2012 meeting and upcoming October 2012 meeting of the Advisory Committee on Evidence Rules.

Judge Wizmur said that at its spring 2012 meeting the Evidence Advisory Committee approved for public comment several rules dealing with the hearsay exception. She added that the Standing Committee has adopted the recommendation and that the rules have been published for comment. She said that electronic discovery rules will be discussed at a symposium in conjunction with the fall 2012 Evidence Committee meeting.

- (E) April 2012 meeting and upcoming September 2012 meeting of the Advisory Committee on Appellate Rules.

The Reporter said that Appellate Rule 6 was currently published for public comment with changes designed to coordinate with the bankruptcy appellate rules that are also published for comment.

- (F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project.

Judge Perris said the last big release for CM/ECF will be delivered to the courts in the next few weeks, and that the first release of NextGen is scheduled for early 2014.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

- (A) Recommendation concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments.

Judge Harris said the Subcommittee considered a suggestion by the Bankruptcy Judges Advisory Group (BJAG) to amend Rule 1006(b) to make clear that a court may require a minimum initial payment when approving requests to pay filing fees in installments. Some courts require an initial payment when a filing is made, Judge Harris said, because of concerns about collecting the filing fee if the case is dismissed before the full fee is paid. Courts do not construe Rule 1006(b) uniformly, however. The BJAG suggestion pointed out that some courts read the rule to prohibit requiring payment of a first installment at filing, and courts that require payment of a first installment at filing vary as to its amount.

BJAG suggested that uncertainty about the practice could be eliminated by amending Rule 1006(b) to clearly state that courts may require a minimum payment to accompany an application to pay in installments. BJAG also recommended that the rule set a maximum amount

for the first installment of 25% of the filing fee as a fair balance between maintaining debtor access to bankruptcy relief and reducing the court burden of collecting unpaid fees.

The Subcommittee concluded that the current language of Rule 1006(b)(1) is inconsistent with a local rule that requires an initial payment with an application to pay in installments. The Subcommittee considered whether to recommend that efforts be made to bring courts requiring an initial installment into conformity with Rule 1006(b), but ultimately concluded that that the national rule should be changed to permit a local practice of requiring an upfront payment of a reasonable amount with an application to pay in installments. Subcommittee members favored a flexible approach so long as the initial payment would not be so great as to discourage applications to pay in installments or to prompt more requests for fee waivers. Accordingly, the Subcommittee accepted BJAG's recommendation of 25% of the total filing fee as the maximum amount that could be required by local rule.

The Subcommittee also discussed but could not come to a consensus on whether the clerk's office should be affirmatively authorized to reject a filing if an initial installment payment required by local rule is not tendered at the time of filing.

Judge Harris said that he had reconsidered his own position since the Subcommittee discussed the BJAG's suggestion, and he thought it would be more equitable to debtors to set a national initial installment amount. Other members also supported a national minimum first installment. Mr. Rao, however, pointed out that an initial installment requirement might actually drive up requests for fee waivers in chapter 7. He said that approximately 30% of chapter 7 filers are eligible to request a fee waiver, but only 2-3% actually request a waiver. After additional discussion, most members favored revising Rule 1006 either to allow or to require a minimum first installment of some amount, but several members thought that additional research should be done to determine the scope of the problem and the likelihood that requiring an initial installment will drive up chapter 7 fee waiver requests. **The Subcommittee agreed to investigate and to report back in the spring.** The Subcommittee was also asked to consider procedures for dealing with any failure to pay an installment when due. No member supported a procedure that allowed the clerk to reject a filing for failure to provide a required initial payment, but there was support for immediately setting a hearing on dismissal.

- (B) Recommendation concerning Suggestion 11-BK-N by for a rule and form for applications to waive fees other than filing fees, under 28 U.S.C. § 1930(f)(2) and (f)(3).

David Yen, an attorney at the Legal Assistance Foundation of Chicago, submitted a suggestion (11-BK-N) regarding the waiver of bankruptcy fees other than the ones that Rule 1006(c) and Official Form 3B currently address. That rule and form govern the waiver of filing fees by individual chapter 7 debtors, as authorized by 28 U.S.C. § 1930(f)(1). Subsection (f)(2) of that statute authorizes waiver of other bankruptcy fees for debtors who qualify for a filing-fee

waiver under (f)(1). And subsection (f)(3) provides that subsection (f) “does not restrict the district court or the bankruptcy court from waiving . . . fees prescribed under this section for other debtors and creditors.”

Mr. Yen proposes that procedures and Official Forms be adopted for (1) debtors who have qualified for a filing-fee waiver and who seek the waiver of additional fees, and (2) debtors as well as creditors who seek fee waivers but who are not entitled to a filing-fee waiver under section 1930(f)(1). Mr. Yen gives some suggestions for the content of these forms.

The Subcommittee concluded that there was no need for a national form to process “other fee” waiver requests from debtors who had already been granted a filing fee waiver under subsection (f)(1) because the information reported in Official Form 3B would either be sufficient for the court to process the request or could be easily updated at the time the new request was made. The Subcommittee also did not think that an official form for waivers under 28 U.S.C. § 1930(f)(3) was necessary, but recommended that the Forms Subcommittee consider the creation of a director’s form for such waivers that could be used by courts if they thought it would be useful to parties seeking fee waivers. **After discussing the Subcommittee’s analysis, the Advisory Committee referred to the Forms Subcommittee the issue of creating a director’s form for fee waivers other than for the chapter 7 filing fee.**

- (C) Recommendation concerning Suggestion 12-BK-B Matthew T. Loughney (on behalf of the Bankruptcy Noticing Working Group) to amend Rule 2002(f)(7) to require notice of the confirmation of the debtor’s chapter 13 plan.

Judge Harris gave the report. He said it is not clear why chapter 13 was omitted from the requirement in Rule 2002(f)(7) to notice confirmation orders, and that members of the Subcommittee saw potential benefits in providing notice of confirmation orders in chapter 13 cases. The Subcommittee also identified two concerns with the suggestion. First, the omission of chapter 13 cases from Rule 2002(f)(7) has not created any confusion in the case law, and nothing prevents courts from invoking their authority in appropriate cases to order service of notice of confirmation on creditors. Second, there is a concern that the costs of requiring notice will outweigh the benefits, particularly if the burden of noticing the confirmation order is placed on the debtor. **After a short discussion, the Advisory Committee deferred consideration and asked the Subcommittee to contact clerks’ offices about whether notice is already being made already under local practice and, if so, whether the court, the trustee, or the debtor bears the cost of the noticing.**

- (D) Oral report concerning Suggestion 12-BK-D Judge S. Martin Teel, Jr., to amend Rule 7001(1) as it concerns compelling the debtor to deliver the value of property to the trustee.

The Reporter said that the Judge Teel's suggestion would allow a trustee to seek turnover of the value of property, in addition to property itself, by a turnover motion against a debtor. Judge Teel's concern arose because sometimes the property subject to a turnover motion has already been disposed of by the time the trustee learns about it, and adding the recovery of the value of property to this procedure would eliminate the requirement for the trustee to file a separate adversary proceeding against the debtor. **The Reporter said that there were concerns about whether this was a sufficiently significant problem to require rule changes and that the Subcommittee would consider the issue further and report back at the spring meeting.**

5. Joint Report by the Subcommittees on Consumer Issues and Forms.

Oral report on the mini-conference to gather input on new Rules 3001(c) and 3002.1 and the new mortgage forms –Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2).

The Reporter explained that the day before the meeting the Advisory Committee's Consumer and Forms Subcommittees held a mini-conference on users' experiences with the new mortgage rules (Bankruptcy Rules 3001(c) and 3002.1) and forms (B10 Attachment, B10 Supplement 1, and B10 Supplement 2). Attorneys for consumer debtors and mortgage servicers, chapter 13 trustees, bankruptcy judges, and a bankruptcy clerk participated in the mini-conference and provided constructive feedback about their experiences with the rules and forms.

The participants were divided into panels, and each panel met by phone before the mini-conference to discuss pre-assigned topics. The panels then presented their topics to the rest of the participants at the meeting. The presentations revealed general acceptance of the disclosure requirements in the rules and forms, but also a desire to eliminate ambiguities and to make adjustments to facilitate compliance and provide additional information.

There was general agreement among the participants on the following topics:

- A detailed payment history should be attached to the proof of claim. The payment history should be in a form that can be automated.
- Disclosure requirements should be uniform nationwide with no local variations permitted.
- The proof of claim attachment should include the amount of the mortgage payment as of the petition date.
- Home equity lines of credit (HELOCs) should be treated differently from other types of claims secured by the debtor's principal residence.
- There should be a procedure for objecting to payment changes.
- An official form should be adopted for the Trustee's Notice of Final Cure Payment.

- Rule 3002.1 should specify when the creditor's notice obligation terminates if the residence is surrendered or the stay is lifted.
- Rule 3002.1 should state clearly that it applies whenever a plan provides for maintenance of current mortgage payments, even if there is no arrearage to be cured.
- The attachment to the proof of claim should be revised so that it calculates the claim amount.

Some of the participants agreed to gather additional information for the Advisory Committee's benefit, and others indicated that they would continue to engage in discussions in an effort to arrive at agreement on additional suggestions.

The Consumer and Forms Subcommittees will carefully consider the feedback received at the mini-conference and report at the spring 2013 meeting of the Advisory Committee on any proposals they recommend for amending the mortgage rules or forms.

6. Report by the Chapter 13 Form Plan Working Group.

Recommendation concerning adopting an official form for chapter 13 plans; amending Rules 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 in connection with adopting an official form; and contacting interest groups to obtain reactions to the proposed official form and rules amendments.

Mr. Rao said that a working group has been working on a proposal for an official form for chapter 13 plans. He said the working group started by surveying the many form plans used in districts across the country. It has attempted to incorporate common provisions from those plans into an official form and to provide a structure that allows for easy discovery of uncommon provisions.

In its deliberations, the working group also concluded that amendments to the bankruptcy rules would be helpful – if not essential – to an effective national form. Mr. Rao said that the working group has now created an initial draft of a proposed official form as well as proposed amendments to eight rules (Rules 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009), all of which were included in the agenda materials.

Mr. Rao said that the working group is now seeking feedback from the Advisory Committee on the draft proposals. He said he anticipated that the working group and the Consumer and Forms Subcommittees would use the feedback in revising the proposed plan and rules and would present a recommendation to the Advisory Committee at its spring meeting about publication for public comment. Mr. Rao said the working group members also recommend seeking feedback over the winter from outside groups, such as the National

Association of Chapter 13 Trustees and consumer and creditor attorney groups that practice in chapter 13.

Mr. Rao reviewed the draft plan and rules in the agenda materials and received a number of comments from members identifying issues with the proposals or suggesting improvements to the drafts. One proposal that generated significant discussion among members was the treatment of secured claims under the proposed rules and official form. Mr. Rao explained that a proposed change to the rules that would require secured creditors to file a proof of claim before the plan confirmation hearing date was designed to facilitate resolution of any differences between the plan and the proof of claim and thereby enhance the plan confirmation process.

Mr. Rao said that the Advisory Committee previously agreed in concept to a proposed rule amendment that would require secured creditors to file proofs of claim by a specified deadline. Some Advisory Committee members questioned whether the requirement should apply across all chapters, however, or only in chapter 13, and the question of whether it should apply in chapter 11 cases was referred to the Business Subcommittee. Mr. Rao said the Working Group favored applying the requirement to all chapters, and that the proposed amendment to Rule 3002(a) in the agenda materials would do that. The working group also proposed that the deadline for filing proofs of claim under Rule 3002(c) – which deals with claims in chapters 7, 12, and 13 – be reduced from 90 days after the first date set for the § 341 meeting of creditors to 60 days after the filing of the petition to ensure that claims are filed before the confirmation hearing in chapter 12 or chapter 13. He noted that a different time period is set out for involuntary chapter 7 cases, and that, consistent with the limitation in section 502(b)(9) of the Code, the proposed deadline would not apply to governmental creditors.

Judge Wizmur reviewed concerns considered by the Business Subcommittee about requiring secured creditors to file claims in chapter 11 cases. She said a memo discussing the issues was in the agenda materials at Tab 8A. The main concern, she said, is that there is nothing in chapter 11 practice that would be “fixed” by requiring secured creditors to file a proof of claim and that such a requirement might have unintended consequences. Under 11 U.S.C. § 1111(a), she said, all claims are “deemed filed” if scheduled by the debtor in a chapter 11 case unless they are scheduled as “disputed, contingent or unliquidated.” Accordingly, if the creditor is satisfied with how its claim is scheduled, it does not need to file a proof of claim.

Judge Wizmur said that one perceived advantage of not filing a claim is that the creditor can avoid subjecting itself to the jurisdiction of the bankruptcy court. But, she pointed out, that strategy only works if the creditor is willing to accept how the debtor scheduled the claim. If the creditor wishes to dispute how the claim is scheduled, it must file a proof of claim in order to get the bankruptcy court to resolve the dispute, and, in so doing, will subject itself to bankruptcy court jurisdiction. Judge Wedoff added that changing Rule 3002(a) to require a deadline for filing such a claim just establishes a timeframe for bringing the dispute to the attention of the court. Section 1111(a) along with Rule 3003(c) would still allow the creditor to take advantage

of the “deemed filing” status, and thereby avoid the jurisdiction of the bankruptcy court, if there is no dispute. After further discussion, members who had initially expressed concern about applying a requirement for secured proofs of claim in chapter 11 said their concerns had been addressed.

Members also discussed proposed changes to Rule 9009. Judge Perris explained that the need for the proposed changes stemmed from past experience with the current language which says that, except as provided in Rule 3016(d), the Official Forms “shall be observed and used with alterations as may be appropriate.” She said that some courts have interpreted “with alterations as may be appropriate” as allowing them to require a local variation of a form instead of the official version, and that filers sometimes modified Official Forms without clearly showing the modification. As an example, she said that some creditors simply refused to incorporate the new signature block that was added to the proof of claim form in 2011, and instead used an older version of the signature block. Judge Perris said that the version of Rule 9009 in the agenda materials was amended with the following principles in mind: (1) require courts to accept the official forms, (2) allow users to alter some forms to eliminate questions that are not relevant, (3) prohibit alteration of some forms, such as the proposed official form chapter 13 plan and the proposed detailed loan payment history being considered as a replacement for the official form attachment to the proof of claim form, and (4) allow a court to create local versions of official forms, as long as the court does not require use of a local version instead of the national version.

Members generally agreed with the objectives of the proposed changes to Rule 9009. There was concern, however, about whether the draft in the agenda materials clearly met the objectives. One member said that the phrase “shall be observed and used” seemed imprecise and suggested instead stating simply “shall be used.” Some members pointed out that it may be necessary to go through the forms one by one to decide which should be alterable and which should not. Then Rule 9009 could state a general principle that the Official Forms should (or should not) be alterable, with a carve-out listing the forms to which the general principle does not apply. Another member suggested stating in the rule a general principle of non-alterability that would apply unless the Official Form itself allows for different treatment.

The Reporter pointed out that in deciding whether some official forms should be alterable, and others not alterable, the Subcommittee should be mindful that several rules have different phrasing regarding the use of official forms, such as “prepared as prescribed by the appropriate Official Form,” or “shall conform to the appropriate Official Form” or “conform substantially to the appropriate Official Form.” Finally, Ms. Ketchum pointed out that many of the forms that are designed to be altered, such as the forms used in chapter 11 cases, might be reclassified as director’s forms so it is clear that alterations are not restricted by Rule 9009.

Members also discussed several options for obtaining feedback from outside groups about the proposed rules and form chapter 13 plan. **The Advisory Committee decided that the**

best approach to develop dialog among different chapter 13 constituencies would be to hold a one day mini-conference in Chicago on January 17, 2013, the day before the planned public hearing in Chicago on the bankruptcy rules currently published for comment. [After the meeting concluded, the proposed date was changed to **January 18, 2013**, the same date as the scheduled public hearing in Chicago].

7. Report by the Subcommittee on Forms and the Forms Modernization Project.

(A) Report on the status of the Forms Modernization Project.

Judge Perris gave an overview of the progress of the Forms Modernization Project (FMP) since its inception in 2008. She noted that the fee forms, income and expense forms, and means test forms were all approved for publication by the Standing Committee at its June meeting and were out for public comment now. She said that there was one comment so far (positive) but that she expected more feedback by the end of the comment period, February 15, 2013.

Judge Perris said the FMP was largely done with the individual filing package, and the agenda materials included the most recent versions of the following forms: proposed new Official Forms B101, B101AB, B102, B104, B106-Summary, B106A, B106B, B106C, B106D, B106E, B106F, B106-Declaration, B107, B112, B119, B318, B423, and B427 and the committee notes and instructions. She said the new numbering system was a result of creating different forms for filing individual and non-individual bankruptcy cases. She said that the 1XX series was used for forms filed early in individual bankruptcy cases, the 2XX series was for forms filed early in non-individual cases, the 3XX series was for orders and court notices, and the 4XX series was for forms filed later in the case. She added that because all the new official forms would be three digits, the director's forms (which currently use three digits) would use four digits, generally by adding a zero to the end of the current three-digit number.

Judge Perris explained that general instructions were now in the form of a booklet, rather than associated with each particular form, to avoid repetition of common instructions and to more clearly separate the instructions from the forms that would be filed. She said her purpose in bringing the forms to the Advisory Committee for this meeting was to solicit feedback to consider along with any comments received on the FMP forms that are currently out for public comment. She added that she anticipated resubmission of revised versions at the spring meeting with a request for publication.

Judge Perris explained the development of the non-individual forms is well underway, and those forms would likely look much different than the individual forms. The non-individual forms are being designed with the following guiding principles:

- Eliminate requests for information that pertains only to individuals.

- To the extent possible, parallel how businesses commonly keep their financial records.
- Include information identifying where and how the requested information departs from information maintained according to standard accounting practices.
- Provide better instructions about how to value assets on the schedules, and provide a valuation methodology that will allow people who commonly sign schedules to respond without needing expert valuations of assets.
- Revise the secured debt schedule to clarify the status of debts that are cross-collateralized and the relative priority of secured creditors.
- Require responsive information to be set out in the forms themselves and not simply included as attachments.
- Use a more open-ended response format, as compared to the draft individual debtor forms.
- Keep inter-district variations to a minimum, particularly with respect to the mailing matrix.

Judge Perris said that it was not yet clear when the non-individual forms would be ready to publish for comment, and that further consideration would be appropriate at the spring meeting. A likely possibility is that the individual and non-individual forms will have to be published in successive years. That means, Judge Perris said, that the Advisory Committee will have to decide whether to recommend that each group of forms go into effect in the normal course (i.e., in successive years), or if instead it would be less disruptive to the bankruptcy community to hold the effective date for the individual forms for a year to allow both individual and non-individual forms to go into effect at the same time.

The Advisory Committee reviewed the individual forms in the agenda materials and had the following comments:

B101: A member noted that there are missing checkboxes on questions 2 and 3. Another member asked whether including the leading “9” in the space for the debtor’s Individual Taxpayer Identification Number (to be filled out if the debtor has an ITIN instead of a social security number) might be confusing to some debtors because there were only eight digits left to fill out. Another member suggested that it might be clearer if the “9” were underlined, and members agreed to defer to the judgment of the FMP’s forms consultant.

B104 CN: A member suggested adding an “s” to “eliminate” in first line of last paragraph of the Committee Note for the list of 20 Largest Unsecured Creditors.

B106-Summary: The Advisory Committee discussed replacing “married people” with “spouses” because “married” is not in the Bankruptcy Code, but most members favored using “married people.”

B106A: A member pointed out that there are missing checkboxes on question 1a. Another member suggested that the form ask for the purchase price of listed vehicles as a check on the accuracy of the figure reported for current value, but most members thought auto valuation books already provided a sufficient check on reported current value.

B106C: Judge Perris explained that the form combines both priority and non-priority unsecured claims, which are currently on separate forms, into a single form. One member suggested that, although it is clear from the layout and instructions on B106B that the unsecured portion of a secured claim should be reported on that form, a cross reference in the instructions for this form might also be helpful.

B106D: Judge Perris said that form incorporates a proposed change addressing *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), that is further discussed at Tab 7B of the Agenda Book.

After the Advisory Committee reviewed all of the individual schedules, one member asked for reconsideration of the proposed numbering scheme as it pertains to the schedules. The suggestion would change Schedule B106A to B106AB, to signal that it is derived from current schedules A and B, and change B106C to B106EF to signal that it is derived from current schedules E and F. The proposed changes would allow the remaining schedules to retain the same letter designation as current versions which could be less disruptive. No other member seconded the proposal for reconsideration of the new numbering scheme.

B112: A member noted that checkboxes are missing from the first column in the middle of the first page of the form.

Instruction Book: A member said the table of contents should be updated, and noted that page numbers in the table of contents for the glossary seem to show only the leading digit (i.e., “4” instead of “40”).

After further discussion, the Advisory Committee decided to include the individual forms, related committee notes, and instruction book in its report to the Standing Committee with a request for preliminary comments.

- (B) Recommendation concerning revision of the exemption schedule as a result of the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010).

The Reporter explained that last spring, based on concerns raised during the public comment period, the Committee withdrew a proposed amendment to the exemption schedule that was designed to implement the holding in *Schwab*. The proposal would have added a checkbox to the form to allow debtors to state the value of a claimed exemption as the “full fair market value of the exempted property”—as an alternative to stating “Exemption limited to \$_____.”

The Reporter said that the FMP, and the Consumer and Forms Subcommittees, subsequently developed an alternative approach that was incorporated into the version of the exemption schedule included with the new FMP form at Tab 7A. **Because the Advisory Committee is not being asked to take action on any of the FMP forms at this meeting, however, the Chair tabled the recommendation regarding the *Schwab* holding until the spring meeting.**

8. Report by the Subcommittee on Business Issues.

- (A) Report concerning amending the Bankruptcy Rules to require the filing of proofs of secured claims in chapter 11 cases.

See discussion at Tab 6.

- (B) Recommendation concerning Suggestion 11-BK-M by attorney Jim F. Spencer, Jr., on behalf of the Advisory Committee to the Uniform Local Rules for the Northern and Southern Districts of Mississippi, to amend Rule 9027 to require that a notice of removal be filed with the bankruptcy clerk for the district and division where the civil action to be removed is pending.

Judge Wizmur said that the Subcommittee recommends no action on this item because the majority of the case law now holds that a notice of removal should be filed with the bankruptcy court, and because Bankruptcy Rule 9013 defines “clerk” as the bankruptcy clerk. **The Committee declined to take any action.**

9. Report by the Subcommittee on Privacy, Public Access, and Appeals.

Recommendation concerning Suggestion 12-BK-H by Professor Alan N. Resnick to amend the Bankruptcy Rules in response to *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Judge Jordon said that the Subcommittee recommends reconsidering the suggestion at a future meeting because the Advisory Committee’s *Stern*-related rules amendments are still out for public comment, because case law is still developing on *Stern*, and because a number of courts have created local rules that address the suggestion. **The Advisory Committee agreed to reconsider suggestion 12-BK-H at a future meeting.**

10. Report by the Subcommittee on Technology and Cross Border Insolvency.

Report concerning adopting a bankruptcy rule establishing standards for electronic signatures by parties other than attorneys.

Mr. Baxter said that, as described in the agenda materials, the Subcommittee has considered two options for the use of electronic signatures by debtors or others who are not part of the CM/ECF system: a declaration procedure similar to the one used in the Northern District of Illinois, or an amendment to Bankruptcy Rule 5005(b) that would allow electronic filing for documents filed and signed in accordance with Judicial Conference procedures. He said that, since there are not currently any Judicial Conference filing procedures for electronic signatures, the Subcommittee favored the declaration procedure as being easier to implement. The Subcommittee would like to do further research to determine how many other bankruptcy courts are already using declaration procedures like the one in Illinois, and to evaluate the experiences the three courts that are testing the pro se electronic filing pilot in NextGen. Dr. Johnson has agreed to undertake this research and will report her findings to the Subcommittee. **The Subcommittee will report back at the spring 2013 meeting.**

11. Oral report by the Subcommittee on Attorney Conduct and Health Care.

Mr. Rao said that the Subcommittee had no assignments.

Discussion Items

12. Oral report on the revision of Interim Rule 1007-I to conform the Interim Rule to the proposed amendment to Rule 1007, which is scheduled to take effect on December 1, 2012.

The Committee agreed that the Director should advise the courts to amend their local rule version of Interim Rule 1007-I so that it conforms to the pending Rule 1007 changes that are scheduled to go into effect on December 1, 2012.

13. Oral report on Suggestion 12-BK-E by Judge Richard Schmidt to amend Rules 7008, 7012, 9014, 9027, and 9033 in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

The Chair said that part of the suggestion has already been incorporated into the *Stern*-amendments that are currently out for public comment, and that the Advisory Committee previously considered and rejected the possibility of requiring a litigant to affirmatively demand an Article III judge or face waiver of that right. **No further action required by the Committee.**

14. Oral report on Suggestion 12-BK-L by Judge Neil P. Olack to amend Rule 7008(b) to clarify the pleading requirements to recover statutory attorney's fees.

The Chair said this matter has already been considered and the current amendments published for public comment would eliminate 7008(b) in its entirety and replace it with 7054. **No further action required.**

Information Items

15. Oral report on the status of bankruptcy-related legislation, including the revision of Forms B200 and B201 as a result of the enactment of the Temporary Bankruptcy Judgeships Extension Act of 2012 (Pub. L. No. 112-121).

Mr. Wannamaker reviewed pending legislation. He explained that in light of the upcoming election it was unlikely that anything would pass this year, but that much of the legislation would probably be reintroduced in the next legislative session. He said that the Temporary Bankruptcy Judgeships Extension Act of 2012 did pass and has been enacted as Pub. L. No. 112-121. He said the new law would have a minor impact on two Director's Forms, B200 and B201, both of which would need to be updated to reflect an increase in the Chapter 11 filing fee that occurred to pay for the extended judgeships.

16. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code.

The Reporter said that 11 U.S.C. § 109(h) requires individual debtors to complete an approved course on credit counseling in order to be a debtor under title 11. She said that courts were split on the meaning of the original language of that subsection and whether it allowed the debtor to file a petition on the same day as taking the course (so long as the course was completed prior to filing) or if it instead required the debtor to wait a calendar day before filing. The Reporter said that a technical amendment made to section 109(h) in 2011 was apparently designed to settle the court split by making clear that the debtor may file a case the same day as completing the required course. Unfortunately, however, the technical amendment introduced a new ambiguity, and might now be read to allow the debtor to file the petition and then complete the counseling course later in the day.

The Reporter said that if courts interpreting section 109(h) allow completion of the credit counseling course on the same day but after the petition is filed, the Advisory Committee may need to consider amendments to Rule 1007 and Official Form 23. She said no changes were needed yet, however, because the two bankruptcy courts that have reviewed the new language so far have both concluded that the credit counseling course must be completed before the bankruptcy petition is filed. She said she would report on further case law developments at the spring 2013 meeting.

17. *Bull Pen.*

Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7) which would authorize providers of financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting.

The proposed amendment is scheduled to go forward at the spring 2013 meeting.

18. Rules Docket.

Mr. Wannamaker asked members to review the Rules Docket and to let him know if any changes are needed.

19. Future meetings: Spring 2013 meeting, April 2 – 3, in New York City. Possible locations for the fall 2013 meeting.

The Chair suggested Minneapolis for the fall 2013 meeting.

20. New business.

The Chair expressed his profound thanks to District Judge James A. Teilborg, who was attending his last meeting as liaison from the Standing Committee.

21. Adjourn.

Respectfully submitted,

Scott Myers

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of January 3-4, 2013
Cambridge, Massachusetts

Draft Minutes

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ATTENDANCE

The winter meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Cambridge, Massachusetts, on Thursday and Friday, January 3 and 4, 2013. The following members were present:

Judge Jeffrey S. Sutton, Chair
Dean C. Colson, Esq.
Roy T. Englert, Jr., Esq.
Gregory G. Garre, Esq.
Judge Marilyn L. Huff
Chief Justice Wallace B. Jefferson
Dean David F. Levi
Judge Patrick J. Schiltz
Larry D. Thompson, Esq.
Judge Richard C. Wesley
Judge Diane P. Wood

The Department of Justice was represented at various points at the meeting by Acting Assistant Attorney General Stuart F. Delery, Elizabeth J. Shapiro, Esq., and Allison Stanton, Esq.

Deputy Attorney General James M. Cole, Judge Neil M. Gorsuch, and Judge Jack Zouhary were unable to attend.

Also participating were former member Judge James A. Teilborg; Professor Geoffrey C. Hazard, Jr., consultant to the committee; and Peter G. McCabe, Administrative Office Assistant Director for Judges Programs. The committee's style consultant, Professor R. Joseph Kimble, participated by telephone.

On Thursday afternoon, January 3, Judge Sutton moderated a panel discussion on civil litigation reform initiatives with the following panelists: Judge John G. Koeltl, a member of the Advisory Committee on Civil Rules and Chair of its Duke Conference subcommittee; Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System at the University of Denver and a former justice of the Colorado Supreme Court; Dr. Emery G. Lee, III, Senior Research Associate in the Research Division of the Federal Judicial Center; and Judge Barbara B. Crabb, U.S. District Court for the Western District of Wisconsin.

Providing support to the Standing Committee were:

Professor Daniel R. Coquillette	The Committee's Reporter
Jonathan C. Rose	The Committee's Secretary and Chief, Rules Committee Support Office
Benjamin J. Robinson	Deputy Rules Officer
Julie Wilson	Rules Office Attorney
Andrea L. Kuperman (by telephone)	Chief Counsel to the Rules Committees
Joe Cecil	Research Division, Federal Judicial Center

Representing the advisory committees were:

- Advisory Committee on Appellate Rules —
 - Judge Steven M. Colloton, Chair
 - Professor Catherine T. Struve, Reporter (by telephone)
- Advisory Committee on Bankruptcy Rules —
 - Judge Eugene R. Wedoff, Chair
 - Professor S. Elizabeth Gibson, Reporter
 - Professor Troy A. McKenzie, Associate Reporter
- Advisory Committee on Civil Rules —
 - Judge David G. Campbell, Chair
 - Professor Edward H. Cooper, Reporter
 - Professor Richard L. Marcus, Associate Reporter
- Advisory Committee on Criminal Rules —

Judge Reena Raggi, Chair
Professor Sara Sun Beale, Reporter
Advisory Committee on Evidence Rules —
Chief Judge Sidney A. Fitzwater, Chair
Professor Daniel J. Capra, Reporter

INTRODUCTORY REMARKS

Judge Sutton opened the meeting by noting the extraordinary service to the rules committees by his predecessor Judge Mark Kravitz, which would be further commemorated at the committee's dinner in the evening. He praised Judge Kravitz's extraordinary ten years of service on both the Civil Rules Advisory Committee and the Standing Committee. Judge Kravitz served as chair of both committees.

Judge Sutton specifically called attention to the commendation of Judge Kravitz in Chief Justice Roberts's year-end report and asked that the following paragraph from that report be included in the minutes:

On September 30, 2012, Mark R. Kravitz, United States District Judge for the District of Connecticut, passed away at the age of 62 from amyotrophic lateral sclerosis—Lou Gehrig's Disease. We in the Judiciary remember Mark not only as a superlative trial judge, but as an extraordinary teacher, scholar, husband, father, and friend. He possessed the temperament, insight, and wisdom that all judges aspire to bring to the bench. He tirelessly volunteered those same talents to the work of the Judicial Conference, as chair of the Committee on Rules of Practice and Procedure, which oversees the revision of all federal rules of judicial procedure. Mark battled a tragic illness with quiet courage and unrelenting good cheer, carrying a full caseload and continuing his committee work up until the final days of his life. We shall miss Mark, but his inspiring example remains with us as a model of patriotism and public service.

Chief Justice John G. Roberts, Jr., 2012 Year-End Report on the Federal Judiciary 11 (2012).

Judge Sutton reported that at its September 2012 meeting, the Judicial Conference approved without debate all fifteen proposed rules changes forwarded to it by the committee for transmittal to the Supreme Court. Assuming approval by the Court and no action by Congress to modify, defer, or delay the proposals, the amendments will become effective on December 1, 2013.

APPROVAL OF MINUTES OF THE LAST MEETING

The committee without objection by voice vote approved the minutes of its last meeting, held on June 11 and 12, 2012, in Washington, D.C.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Campbell and Professors Cooper and Marcus presented the report of the advisory committee, as set forth in Judge Campbell's memorandum of December 5, 2012 (Agenda Item 3). Judge Campbell presented several action items, including the recommendation to publish for comment amendments to Rules 37(e), 6(d), and 55(c). Judge Campbell also presented the advisory committee's recommendation to adopt without publication an amendment to Rule 77(c)(1).

Amendment for Final Approval

FED. R. CIV. P. 77(c)(1) – CROSS REFERENCE CORRECTION

The proposed amendment to Rule 77(c)(1) corrects a cross-reference to Rule 6(a) that should have been changed when Rule 6(a) was amended in 2009 as part of the Time Computation Project. Before those amendments, Rule 6(a)(4)(A) defined "legal holiday" to include 10 days set aside by statute, and Rule 77(c)(1) incorporated that definition by cross-reference.

As a result of the 2009 Time Computation amendment, the Rule's list of legal holidays remained unchanged, but became Rule 6(a)(6)(A). However, through inadvertence, the cross-reference in Rule 77(c) was not addressed at that time. The proposed amendment corrects the cross-reference.

The committee unanimously by voice vote approved the proposed amendment for final approval by the Judicial Conference without publication.

Amendments for Publication

FED. R. CIV. P. 37(e)

Judge Campbell first gave a short history behind the drafting of the proposed new Rule 37(e). He stated that the subject of the rule had been extensively considered at a mini-conference, as well as in numerous meetings of the advisory committee and conference calls of the advisory committee's discovery subcommittee. There was wide

agreement that the time had come for developing a rules-based approach to preservation and sanctions.

The Civil Rules Committee hosted a mini-conference in Dallas in September 2011. Participants in that mini-conference provided examples of extraordinary costs assumed by litigants, and those not yet involved in litigation, to preserve massive amounts of information, as a result of the present uncertain state of preservation obligations under federal law. In December 2011, a subcommittee of the House Judiciary Committee held a hearing on the costs of American discovery that focused largely on the costs of preservation for litigation.

The discovery subcommittee of the advisory committee had agreed for some time that some form of uniform federal rule regarding preservation obligations and sanctions should be established. The subcommittee initially considered three different approaches: (1) implementing a specific set of preservation obligations; (2) employing a more general statement of preservation obligations, using reasonableness and proportionality as the touchstones; and (3) addressing the issue through sanctions. The subcommittee rejected the first two approaches. The approach that would set out specific guidance was rejected because it would be difficult to set out specific guidelines that would apply in all civil cases, and changing technology might quickly render such a rule obsolete. The more general approach was rejected because it might be too general to provide real guidance. The subcommittee therefore opted for a third approach that focuses on possible remedies and sanctions for failure to preserve. This approach attempts to specify the circumstances in which remedial actions, including discovery sanctions, will be permitted in cases where evidence has been lost or destroyed. It should provide a measure of protection to those litigants who have acted reasonably in the circumstances.

After an extensive and wide ranging discussion of the proposed new Rule 37(e), the committee approved it for publication in August 2013, conditioned on the advisory committee reviewing at its Spring 2013 meeting the major points raised at this meeting. Judge Campbell agreed that the advisory committee would address concerns raised by Standing Committee members and make appropriate revisions in the draft rule and note for the committee's consideration at its June 2013 meeting.

During the course of the committee's discussion, the following concerns were expressed with respect to the current draft of proposed new Rule 37(e) and its note:

Displacement of Other Laws

One committee member expressed concern about the statement in the note that the amended rule "*displaces* any other law that would authorize imposing litigation sanctions in the absence of a finding of wilfulness or bad faith, including state law in diversity

cases.” (emphasis added).

The member pointed out that use of the term “displace” could be read as a possible effort to preempt on a broad basis state or federal laws or regulations requiring the preservation of records in different contexts and for different purposes, such as tax, banking, professional, or antitrust regulation. Judge Campbell stated that there had been no such intent on the part of the advisory committee. The advisory committee had been focused on establishing a uniform federal standard solely for the preservation of records for litigation in federal court (including cases based on diversity jurisdiction). The advisory committee intended to preserve any separate state-law torts of spoliation.

Judge Campbell believed the draft committee note could be appropriately clarified to make clear that the proposed rule on preservation sanctions had no application beyond the trial of cases. A committee member noted that a statutory requirement of records preservation for non-trial purposes should not require a litigant to make greater preservation efforts for trial discovery purposes than would otherwise be required by the amended rule.

Use of the Term “Sanction”

Another participant noted that the word “sanction” has particularly adverse significance in most contexts when applied to the conduct of a lawyer. In some jurisdictions, this might require reporting an attorney to the board of bar overseers. Thus, in using the term “sanction,” he urged that the advisory committee differentiate between its use when referring to the actions permitted under the rule in response to failures to preserve and its broader application to the general area of professional responsibility.

“Irreparable Deprivation”

Several committee members raised concerns about proposed language that would allow for sanctions if the failure to preserve “irreparably deprived a party of any meaningful opportunity to present a claim or defense.” These members stated that this language could potentially eliminate most of the rule’s intended protection for the innocent and routine disposition of records. Also, as a matter of style and precise expression, one committee member preferred substitution of the word “adequate” for the word “meaningful.”

Acts of God

Another concern was whether the proposed draft of Rule 37(e) would permit the imposition of sanctions against an innocent litigant whose records were destroyed by an “act of God.” The accidental destruction of records because of flooding during the recent

Hurricane Sandy was offered as a hypothetical example. Judge Campbell agreed that a literal reading of the current draft might lead to imposition of sanctions as the result of a blameless destruction of records resulting from such an event. Both he and Professor Cooper agreed that the question of who should bear the loss in an “act of God” circumstance was an important policy issue for the advisory committee to revisit at its spring meeting.

Preservation of Current Rule 37(e) Language

The Department of Justice and several committee members also recommended retention of the language of the current Rule 37(e), which protects the routine, good-faith operation of an electronic information system. Andrea Kuperman’s research showed that the current rule is rarely invoked. But the Department of Justice argued that in its experience, the presence of the Rule 37(e) has served as a useful incentive for government departments to modernize their record-keeping practices.

Expanded Definition of “Substantial Prejudice”

The Department also urged that the term “substantial prejudice in the litigation”—a finding required under the draft proposal in order to impose sanctions for failure to preserve—be given further definition. It suggested that “substantial prejudice” should be assessed both in the context of reliable alternative sources of the missing evidence or information as well as in the context of the materiality of the missing evidence to the claims and defenses involved in the case. The Department and several committee members suggested that publication for public comment might be helpful to the committee in developing its final proposed rule.

By voice vote, the committee preliminarily approved for publication in August 2013 draft proposed Rule 37(e) on the condition that the advisory committee would review the foregoing comments and make appropriate revisions in the proposed draft rule and note for approval by the Standing Committee at its June 2013 meeting.

FED. R. CIV. P. 6(d) – CLARIFICATION OF “3 DAYS AFTER SERVICE”

Professor Cooper reviewed the advisory committee’s proposed amendment to Rule 6(d), which provides an additional 3 days to act after certain methods of service. The purpose of the amendment is to foreclose the possibility that a party who must act within a specified time after making service could extend the time to act by choosing a method of service that provides the added time.

Before Rule 6(d) was amended in 2005, the rule provided an additional 3 days to

respond when service was made by various described means. Only the party being served, not the party making the service, had the option of claiming the extra 3 days. When Rule 6(d) was revised in 2005 for other purposes, it was restyled according to the conventions adopted for the Style Project, allowing 3 additional days when a party must act within a specified time “after service.” This could be interpreted to cover rules allowing a party to act within a specified time after making (as opposed to receiving) service, which is not what the advisory committee intended. For example, a literal reading of present Rule 6(d) would allow a defendant to extend from 21 to 24 days the Rule 15(a)(1)(A) period to amend once as a matter of course by choosing to serve the answer by any of the means specified in Rule 6(d). Although it had not received reports of problems in practice, the advisory committee determined that this unintended effect should be eliminated by clarifying that the extra 3 days are available only to the party receiving, as opposed to making, service.

The committee without objection by voice vote approved the proposed amendment for publication.

FED. R. CIV. P. 55(c) – APPLICATION TO “FINAL” DEFAULT JUDGMENT

Professor Cooper explained that the proposed amendment to Rule 55(c), the rule on setting aside a default or a default judgment, addresses a latent ambiguity in the interplay of Rule 55(c) with Rules 54(b) and 60(b) that arises when a default judgment does not dispose of all claims among all parties to an action. Rule 54(b) directs that the judgment is not final unless the court directs entry of final judgment. Rule 54(b) also directs that the judgment “may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Rule 55(c) provides simply that the court “may set aside a default judgment under Rule 60(b).” Rule 60(b) in turn provides a list of reasons to “relieve a party . . . from a final judgment, order, or proceeding”

A close reading of the three rules together establishes that relief from a default judgment is limited by the demanding standards of Rule 60(b) only if the default judgment is made final under Rule 54(b) or when there is a final judgment adjudicating all claims among all parties.

Several cases, however, have struggled to reach the correct meaning of Rule 55(c), and at times a court may fail to recognize the meaning. The proposed amendment clarifies Rule 55(c) by adding the word “final” before “default judgment.”

The committee without objection by voice vote approved the proposed amendment for publication.

Information Items

Judge Campbell reported on several information items that did not require committee action at this time.

DUKE CONFERENCE SUBCOMMITTEE WORK

A subcommittee of the advisory committee formed after the advisory committee's May 2010 Conference on Civil Litigation held at Duke University School of Law ("Duke Conference subcommittee") is continuing to implement and oversee further work on ideas resulting from that conference. Judge Campbell and Judge Koeltl (the Chair of the Duke Conference subcommittee) presented to the committee a package of various potential rule amendments developed by the subcommittee that are aimed at reducing the costs and delays in civil litigation, increasing realistic access to the courts, and furthering the goals of Rule 1 "to secure the just, speedy, and inexpensive determination of every action and proceeding." This package of amendments has been developed through countless subcommittee conference calls, a mini-conference held in Dallas in October 2012, and discussions during advisory committee meetings. The discussions that have occurred will guide further development of the rules package, with a goal of recommending publication of this package for public comment at the committee's June 2013 meeting.

An important issue at the Duke Conference and in the work undertaken since by the Duke Conference subcommittee has been the principle that discovery should be conducted in reasonable proportion to the needs of the case. In an important fraction of the cases, discovery still seems to run out of control. Thus, the search for ways to embed the concept of proportionality successfully in the rules continues.

Current sketches of possible amendments to parts of Rule 26 exemplify this effort and include the following proposals:

Rule 26

* * * * *

(b) Discovery Scope and Limits.

- (1)** *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case considering the amount in controversy, the importance of the issues at stake in the action, the parties'

resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information [within this scope of discovery] {sought} need not be admissible in evidence to be discoverable. —including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C). * * *

(2) *Limitations on Frequency and Extent.*

(A) *When Permitted.* By order, the court may alter the limits in these rules on the number of depositions, and interrogatories, requests [to produce][under Rule 34], and requests for admissions, or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(C) *When Required.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: * * *

(iii) the burden or expense of the proposed discovery is outside the scope permitted by Rule 26(b)(1) outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

* * * * *

(c) *Protective Orders*

(1) *In General.* * * * The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: * * *

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; * * *

The drafts are works in progress and will be revisited by the advisory committee at its spring meeting.

FED. R. CIV. P. 84 AND FORMS

Judge Campbell further reported that the subcommittee of the advisory committee formed to study Rule 84 and associated forms is inclined to recommend abrogating Rule 84. This inclination follows months of gathering information about the general use of the forms and whether they provide meaningful help to attorneys and pro se litigants. The advisory committee is evaluating the subcommittee's inclination and intends to make a recommendation to the committee concerning the future of Rule 84 at the June 2013 meeting. If Rule 84 is abrogated, forms will still remain available through other sources, including the Administrative Office. Although forms developed by the Administrative Office do not go through the full Enabling Act process, the subcommittee would likely recommend that the advisory committee plan to work with the Administrative Office in drafting and revising forms for use in civil actions.

The committee briefly discussed the feasibility of appointing a liaison member of the civil rules advisory committee to the Administrative Office forms committee. Several members of the committee praised the prior work of the Administrative Office forms committee, particularly its ready responsiveness to current judicial and litigant needs. Its flexibility and responsiveness to rapidly changing requirements were favorably compared to the more cumbersome process imposed by the Rules Enabling Act. Peter McCabe, who chairs the Administrative Office forms committee, expressed the willingness of that committee to respond to the needs of the civil rules advisory committee.

No significant concern was raised by the committee about the potential abrogation of Rule 84.

MOTIONS TO REMAND

Judge Campbell reported on a proposal from Jim Hood, Attorney General of Mississippi, to require automatic remand in cases in which a district court takes no action on a motion to remand within thirty days. Attorney General Hood also proposed that the removing party be required to pay expenses, including attorney fees, incurred as a result of removal when remand is ordered. While the advisory committee was sympathetic to the problems created by federal courts failing to act timely on removal motions, it did not believe the subject fell within the jurisdiction of the rules committees. Both subject matter jurisdiction and the shifting of costs from one party to another on removal and remand are governed by federal statutes enacted by Congress and not by rules promulgated under the Rules Enabling Act. Judge Sutton has conveyed the advisory committee's response to Attorney General Hood.

PANEL ON CIVIL LITIGATION REFORM PILOT PROJECTS

Four panelists covered the topics outlined below.

Selected Federal Court Reform Projects

Judge Koeltl outlined five litigation reform projects that the Duke Conference subcommittee is following. These include:

a. A set of mandatory initial discovery protocols for employment discrimination cases was developed as part of the work resulting from the Duke Conference. These protocols were developed by experienced employment litigation lawyers and have so far been adopted by the Districts of Connecticut and Oregon.

b. A set of proposals embodied in a pilot project in the Southern District of New York to simplify the management of complex cases.

c. A Southern District of New York project to manage section 1983 prisoner abuse cases with increased automatic discovery and less judicial involvement. The project's goal is to resolve these types of cases within 5.5 months using judges as sparingly as possible through the use of such devices as specific mandatory reciprocal discovery, mandatory settlement demands, and mediation.

d. A project in the Seventh Circuit inspired by Chief Judge James F. Holderman that seeks to expedite and limit electronic discovery. The project emphasizes concepts of proportionality and cooperation among attorneys. One specific innovation, Judge Koeltl noted, was the mandatory appointment of a discovery liaison by each litigant.

e. The expedited trial project being implemented in the Northern District of California. This project provides for shortened periods for discovery and depositions and severely limits the duration of a trial. The goal is for the trial to occur within six months after discovery limits have been agreed upon. Judge Koeltl acknowledged, however, that this entire procedure is an "opt in" one, and so far no litigant has "opted" to use it. As a result, the entire project is now under review to determine what changes will make it more appealing to litigants.

State Court Pilot Projects

Justice Kourlis presented a summary of information compiled by the Institute for the Advancement of the American Legal System on state court pilot projects. She said

these projects fell into three basic categories, all with the common purpose of increasing access to the courts for all types of litigants. The three basic categories were:

a. Different rules for different types of cases

One category of pilot projects attempts to resolve issues of costs and delay by establishing different sets of rules for different types of cases, such as for complex (e.g., business) cases and simple cases amenable to short, summary, and expedited (“SES”) procedures. Complex case programs are currently underway in California and Ohio. In those projects, the emphasis appears to be on close judicial case management, frequent conferences, and cooperation by counsel. Substantial prior experience in complex business cases by participating judges appears to have contributed to the success of the projects.

SES programs for simple cases are currently underway in California, Nevada, New York, Oregon, and Texas. These programs emphasize streamlined discovery, strict adherence to tight trial deadlines, and, in at least one state, mandatory participation by litigants whose cases fall under a \$100,000 damages limit.

b. Proportionality in Discovery

A number of states have launched projects to achieve this objective. These projects have involved local rule changes to expedite and limit the scope of discovery, more frequent and earlier conferences with judges, and more active judicial case management to achieve proportionate discovery and encourage attorney cooperation.

c. Active Judicial Case Management

This third category of state projects overlaps with the first two categories. Some examples of the techniques employed include: (i) the assignment of a case to a single judicial officer from start to finish; (ii) early and comprehensive pretrial conferences; and (iii) enhanced judicial involvement in pretrial discovery disputes before the filing of any written motions.

A “Rocket Docket” Court

Judge Crabb gave a succinct presentation on the benefits of her “rocket docket” court (the Western District of Wisconsin) and how such a court can effectively manage its docket. She explained that litigants value certainty and predictability, and that the best way to achieve these goals is to set a firm trial date. Given her court’s current case volume, the goal is to complete a case within twelve to fifteen months after it is filed. Judge Crabb explained that this management style achieves transparency, simplicity, and

service to the public.

Once a case is filed in the Western District of Wisconsin, a magistrate judge promptly holds a comprehensive scheduling conference. At this conference, a case plan is developed and discovery dates are fixed. Although this court usually will not change pre-trial discovery deadlines, it will do so on application of both parties if the ultimate trial date is not jeopardized.

In Judge Crabb's district, the magistrate judges are always available for telephone conferences on motions or other pretrial disputes, but they do not seek to actively manage cases. The litigants know that they have a firm trial date and can be relied upon to seek judicial intervention whenever it is necessary. In Judge Crabb's view, this "rocket docket" approach permits both the rapid disposition of a high volume of cases and maintenance of high morale of the court staff.

Federal Judicial Center Statistical Observations on Discovery

Dr. Lee of the Federal Judicial Center then gave a short presentation on statistical observations about discovery. He noted that the Center's research shows that the cost of discovery is a problem only in a minority of cases. Indeed, various statistical analyses lead him to conclude that the problem cases are a small subset of the total number of cases filed and involve a rather small subset of difficult lawyers.

Dr. Lee cited a multi-variant analysis done in 2009 and 2010 for the Duke Conference. In that study, the Federal Judicial Center found that the costly discovery cases have several common factors:

1. High stakes for the litigants (either economic or non-economic);
2. Factual complexity;
3. Disputes over electronic discovery; and
4. Rulings on motions for summary judgment.

Other interesting statistical observations of the study included the fact that on average a 1% increase in the economic value of the case leads to a .25% increase in its total discovery cost. Other discovery surveys indicate that almost 75% of lawyers on average believe that discovery in their cases is proportionate and that the other side is sufficiently cooperative. Only in a small minority of the cases—approximately 6%—are lawyers convinced that discovery demands by the opposing side are highly unreasonable.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Colloton and Professor Struve presented the report of the advisory committee, as set forth in Judge Colloton's memorandum of December 5, 2012 (Agenda Item 6). There were no action items for the committee.

Information Items

SEALING AND REDACTION OF APPELLATE BRIEFS

Judge Colloton reported that the advisory committee had decided not to proceed with a proposal to implement a national uniform standard for sealing or redaction of appellate briefs. He explained that the circuits take varying approaches to sealing and redaction on appeal. During the advisory committee's discussions, several members had expressed support for the approach of the Seventh Circuit, where sealed items in the record on appeal are unsealed after a brief grace period unless a party seeks the excision of those items from the record or moves to seal them on appeal. This approach is based on the belief that judicial proceedings should be open and transparent. However, members also noted that each circuit currently seems satisfied with its own approach to sealed filings.

Given the division of opinion among the circuits, the advisory committee ultimately decided there was no compelling reason to propose a rule amendment on the topic of sealing on appeal. However, its members believed that each circuit might find it helpful to know how other circuits handle such questions; therefore, shortly after its meeting, Judge Sutton, in one of his last acts as the chair of the advisory committee, wrote to the chief judge and clerk of each circuit to summarize the concerns that have been raised about sealed filings, the various approaches to those filings in different circuits, and the rationale behind the approach of the Seventh Circuit.

MANUFACTURED FINALITY

The advisory committee also revisited the topic of "manufactured finality," which occurs when parties attempt to create an appealable final judgment by dismissing peripheral claims in order to secure appellate review of the central claim. A review of circuit practice found that virtually all circuits agree that an appealable final judgment is created when all peripheral claims are dismissed with prejudice. Many circuits also agree that an appealable final judgment is not created when a litigant dismisses peripheral claims without prejudice, although some circuits take a different view. But less uniformity exists for handling middle ground attempts to "manufacture" finality. For example, there is disagreement in the circuits as to whether an appealable judgment results if the appellant conditionally dismisses the peripheral claims with prejudice by

agreeing not to reassert the peripheral claims unless the appeal results in reinstatement of the central claim. A joint civil-appellate rules subcommittee was appointed to review whether “manufactured finality” might be addressed in the federal rules. On initial examination, members had divergent views.

Before last fall’s advisory committee meeting, the Supreme Court accepted for review *SEC v. Gabelli*, 653 F.3d 49 (2nd Cir. 2011), *cert. granted*, 133 S.Ct. 97 (2012). The Second Circuit’s jurisdiction in that case rested on “conditional finality.” Since the Court might clarify this issue in that case, the advisory committee decided to await the Court’s decision before deciding how to proceed.

LENGTH LIMITS FOR BRIEFS

The advisory committee is considering whether to overhaul the treatment of filing-length limits in the Appellate Rules. The 1998 amendments to the Appellate Rules set the length limits for merits briefs by means of a type-volume limitation, but Rules 5, 21, 27, 35, and 40 still set length limits in terms of pages for other types of appellate filings. Members have reported that the page limits invite manipulation of fonts and margins, and that such manipulation wastes time, disadvantages opponents, and makes filings harder to read. The advisory committee intends to consider whether the type-volume approach should be extended to these other types of appellate filings.

CLASS ACTION OBJECTORS

Finally, the advisory committee has received correspondence about so-called “professional” class action objectors who allegedly file specious objections to a settlement and then appeal the approval of the settlement with the goal of extracting a payment from class action attorneys in exchange for withdrawing their appeals. One proposed solution would amend Rule 42 to require court approval of voluntary dismissal motions by class action objectors, together with a certification by an objector that nothing of value had been received in exchange for withdrawing the appeal. Another proposed solution would require an appeal bond from class action objectors sufficient to cover the costs of delay caused by appeals from denials of non-meritorious objections. Judge Colloton suggested that collaboration with the Civil Rules Advisory Committee would likely be required to determine both the scope of and possible remedies for this problem.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Raggi and Professor Beale presented the report of the advisory committee, as set forth in Judge Raggi’s memorandum of November 26, 2012 (Agenda Item 8). As the committee’s fall meeting in Washington was canceled as a result of Hurricane Sandy,

there were no action items for the committee.

Information Items

Judge Raggi reported that on the agenda for the advisory committee's Fall 2012 meeting and now high on the agenda for its Spring 2013 meeting is a Department of Justice proposal to amend Rule 4 to permit effective service of summons on a foreign organization that has no agent or principal place of business within the United States. The Department argues that its proposed change is necessary in order to prevent evasion of service by organizations committing offenses within the United States.

Judge Raggi also reported on the status of the proposed amendments to Rule 12, the rule addressing pleadings and pretrial motions. The proposed amendments were published for public comment in August 2011. The amendments clarify which motions must be raised before trial and the consequences if the motions are not timely filed. Numerous comments were received, including detailed objections and suggestions from various bar organizations. The committee's reporters prepared an 80-page analysis of these comments. In its consideration of the comments, the Rule 12 subcommittee reaffirmed the need for the amendment, but concluded that the public comments warranted several changes in its proposal. With those changes, the subcommittee has recommended to the advisory committee that an amended proposal be approved and transmitted to the Standing Committee for its approval. The advisory committee's consideration of the Rule 12 subcommittee's report will take place at its Spring 2013 meeting. Judge Raggi expressed her appreciation for the extended attention already devoted by Judge Sutton to the committee's work on Rule 12.

REPORT OF THE ADVISORY COMMITTEE ON RULES OF EVIDENCE

Judge Fitzwater and Professor Capra delivered the report of the advisory committee, as set forth in Judge Fitzwater's memorandum of November 26, 2012 (Agenda Item 4). There were no action items for the committee.

Information Items

SYMPOSIUM ON FED. R. EVID. 502

Professor Capra reported on a symposium the advisory committee hosted in conjunction with its Fall 2012 meeting. The purpose of the symposium was to review the current use (or lack of use) of Rule 502 (on attorney-client privilege and work product and waiver of those protections) and to discuss ways in which the rule can be better known and understood so that it can fulfill its original purposes of clarifying and limiting

waiver of privilege and work product protection, thereby reducing delays and costs in litigation. Panelists included judges, lawyers, and academics with expertise and experience in the subject matter of the rule, some of whom are also veterans of the rulemaking process. The symposium proceedings and a model Rule 502(d) order will be published in the March 2013 issue of the *Fordham Law Review*.

The panel attributed much of the lack of use of Rule 502 as a device to aid in pre-production review to a simple lack of knowledge of the rule by practitioners and judges. Part of this absence of knowledge was attributed to the rule's location in the rules of evidence as opposed to the rules of civil procedure. Various suggestions on promotion of the rule's visibility, including a model Rule 502 order, education through Federal Judicial Center classes and a possible informational letter to chief district judges, are in the process of being implemented or developed.

PROPOSED AMENDMENTS TO FED. R. EVID. 801(d)(1) AND 803(6)-(8)

A published proposed amendment to Rule 801(d)(1), the hearsay exemption for certain prior consistent statements, provides that prior consistent statements are admissible under the hearsay exemption whenever they would otherwise be admissible to rehabilitate the witness's credibility. This proposal has been the subject of only one public comment so far. Proposed amendments to Rule 803(6)-(8)—the hearsay exemptions for business records, absence of business records, and public records—would clarify that the opponent has the burden of showing that the proffered record is untrustworthy. No comments have been received yet on this proposal.

SYMPOSIUM ON TECHNOLOGY AND THE FEDERAL RULES OF EVIDENCE

Judge Fitzwater reported that the advisory committee is planning to convene a symposium to highlight the intersection of the evidence rules and emerging technologies and to consider whether the evidence rules need to be amended in light of technological advances. The symposium will be held in conjunction with the advisory committee's Fall 2013 meeting at the University of Maine School of Law in Portland.

These presentations concluded the first day of the meeting of the Standing Committee.

FRIDAY, JANUARY 4, 2013**REPORT ON PACE OF RULEMAKING**

Benjamin Robinson gave a brief presentation on the timing and pace of federal rulemaking over the past thirty years. Judge Sutton had requested the report, noting that at various times in the past both the Federal Judicial Center and the committee have tackled this subject. He specifically pointed to the Easterbrook-Baker “self-study” report by the Standing Committee, 169 F.R.D. 679 (1995), contained in the agenda book.

Mr. Robinson presented a series of charts that demonstrated that over the past thirty years there have been several peaks and valleys in the pace of federal rulemaking. The charts demonstrated that the peaks were caused by legislative activity and to a lesser extent by several rules restyling projects.

For example, bankruptcy legislation in the mid-1980s created the occasion in 1987 for 117 bankruptcy rule changes. Similarly, bankruptcy legislation created the occasion for 95 bankruptcy rule changes in 1991. Additional bankruptcy legislation in 2005 produced a total of 43 bankruptcy rules amendments in 2008. The civil and evidence rules restyling projects also have required a considerable number of rule changes.

Mr. Robinson’s presentation initiated a broader discussion of the timing and pace of rulemaking by committee members.

Judge Sutton stated that he had placed this matter on the agenda in part to sensitize the Standing Committee to the work required by the Supreme Court on rule amendments.

At one point during the discussion, Judge Sutton advanced a theoretical proposal that perhaps rule changes could be made every two years instead of every year. For example, the civil and appellate rules committees could group their proposed changes in the even years, while the criminal, evidence, and bankruptcy rules committees could group their proposed changes in the odd years. Judge Sutton noted that such a scheme would have the advantage of predictability both for the Supreme Court and for the bar as to what types of rule changes could be expected in a particular year.

Judge Sutton asked for comments from several of those present, in particular, participants who have had extensive experience over the years in the rulemaking process. Several points emerged during the discussion. First, there is no question that the Supreme Court is very aware of the burden that the rulemaking process places upon it. Chief Justices Burger and Rehnquist were particularly conscious of it. Also, the current rules

calendar places a heavy burden on the Court in that the rule proposals arrive in the spring when the Court is busiest. However, no one argued that seeking a legislative change in the calendar made any sense. Instead, the idea was advanced that the Rules Committees could target the March meeting of the Judicial Conference for its major proposals, rather than the September meeting. This would mean that the rule changes could go to the Court at a more convenient time, such as late summer before its annual session begins on October 1. However, a correlative disadvantage would be the overall extension in the length of time required for a proposed amendment to the rules to be adopted.

Experienced observers pointed out that much of the timing of rulemaking is dictated by external factors such as legislation or decided cases. While the timing of such projects as the restyling of the evidence and civil rules might be discretionary, the need for new rules created by legislation or other external events often is not. All participants appeared to agree that keeping the Supreme Court involved in the rulemaking process is most important to its integrity and standing. Thus, all agreed at a minimum that greater sensitivity to the needs and desires of the Court as to the timing of proposed rules changes is highly advisable.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Wedoff, Professor Gibson, and Professor McKenzie presented the report of the advisory committee, as set forth in Judge Wedoff's memorandum of December 5, 2012 (Agenda Item 7). The report covered four major subjects: (1) revisions to the official forms for individual debtors; (2) a mini-conference on home mortgage forms and rules; (3) the development of a Chapter 13 form plan and related rule amendments; and (4) electronic signature issues.

DRAFTS OF REVISED OFFICIAL FORMS FOR INDIVIDUAL DEBTORS

Judge Wedoff first reported on the restyled Official Bankruptcy Forms for individual debtors. These forms are the initial product of the forms modernization project, a multi-year endeavor of the advisory committee, working in conjunction with the Federal Judicial Center and the Administrative Office. The dual goals of the forms modernization project are to improve the official bankruptcy forms and to improve the interface between the forms and available technology.

In August 2012, the first nine forms were published for public comment. To date, few comments have been received; however, the advisory committee expects to receive more comments before the February 15, 2013, deadline, and it will review those comments before seeking approval at the June meeting to publish the following eighteen remaining forms for individual debtor cases that have not yet been published:

Forms To Be Considered in June

- Official Form 101—Voluntary Petition for Individuals Filing for Bankruptcy
- Official Form 101AB—Your Statement About an Eviction Judgment Against You – Parts A and B
- Official Form 104—List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You Who are not Insiders
- Official Form 106 – Summary—A Summary of Your Assets and Liabilities and Certain Statistical Information
- Official Form 106A—Schedule A: Property
- Official Form 106B—Schedule B: Creditors Who Hold Claims Secured by Property
- Official Form 106C—Schedule C: Creditors Who Have Unsecured Claims
- Official Form 106D—Schedule D: The Property You Claim as Exempt
- Official Form 106E—Schedule E: Executory Contracts and Unexpired Leases
- Official Form 106F—Schedule F: Your Codebtors
- Official Form 106 – Declaration—Declaration About an Individual Debtor’s Schedules
- Official Form 107—Your Statement of Financial Affairs for Individuals Filing for Bankruptcy
- Official Form 112—Statement of Intention for Individuals Filing Under Chapter 7
- Official Form 119—Bankruptcy Petition Preparer’s Notice, Declaration and Signature
- Official Form 121—Your Statement About Your Social Security Numbers
- Official Form 318—Discharge of Debtor in a Chapter 7 Case
- Official Form 423—Certification About a Financial Management Course
- Official Form 427—Cover Sheet for Reaffirmation Agreement

In anticipation of seeking publication in June, Judge Wedoff gave the committee an extensive preview of each of the above forms and took under advisement specific committee member comments on each of them with a plan to incorporate these comments in the preparation of the advisory committee’s ultimate proposals.

MINI-CONFERENCE ON HOME MORTGAGE FORMS AND RULES

Judge Wedoff reported on a successful mini-conference held by the advisory committee on September 19, 2012, to explore the effectiveness of the new rules and forms concerning the impact of home mortgage rules and reporting requirements for chapter 13 cases, which went into effect on December 1, 2011. The mini-conference reflected a general acceptance of the disclosure requirements of the new rules, but pointed out various specific difficulties that will likely require some subsequent fine-tuning either

by the advisory committee or through case-law development.

CHAPTER 13 FORM PLAN AND RELATED RULE AMENDMENTS

Professor McKenzie reported on the advisory committee's development of a national form plan for chapter 13 cases. The working group presented a draft of the form plan for preliminary review at the advisory committee's Fall 2012 meeting. The group also proposed amendments to Bankruptcy Rules 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009, specifically to require use of the national form plan and to establish the authority needed to implement some of the plan's provisions.

The advisory committee discussed the proposed form and rules amendments and accepted the working group's suggestion that the drafts be shared with a cross-section of interested parties to obtain their feedback on the proposals. Professor McKenzie reported that a mini-conference on the draft plan and proposed rule amendments was scheduled to take place in Chicago on January 18, 2013. The working group will make revisions based on the feedback received at the mini-conference and then present the model plan package to both the consumer issues and forms subcommittees for their consideration. The subcommittees will report their recommendations to the advisory committee at its Spring 2013 meeting. If a chapter 13 form plan and related rule amendments are approved at that meeting, the advisory committee will request that they be approved for publication in August 2013 at the June meeting of the Standing Committee.

CONSIDERATION OF ELECTRONIC SIGNATURE ISSUES

The last item of Judge Wedoff's report was an update on the advisory committee's consideration (at the request of the forms modernization project) of a rule establishing a uniform procedure for the treatment and preservation of electronic signatures. The advisory committee has requested Dr. Molly Johnson of the Federal Judicial Center to gather information on existing practices regarding the use of electronic signatures by nonregistered individuals and requirements for retention of documents with handwritten signatures. Her findings will be available by the end of this year and will be reported to the advisory committee at its Spring 2014 meeting.

NEXT MEETING

The Standing Committee will hold its next meeting in Washington, D.C., on June 3 and 4, 2013.

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NEXT MEETING

The Standing Committee will hold its next meeting in Washington, D.C., on June 3 and 4, 2013.

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TABS 4A-4B

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Consumer
Suggestions 12-BK-B and 12-BK-I

Items 4A and 4B will be oral reports.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEE ON CONSUMER ISSUES
RE: SUGGESTION FOR AMENDMENT OF RULE 7001(1)
DATE: MARCH 9, 2013

Bankruptcy Judge Martin Teel (D.D.C.) has submitted Suggestion 12-BK-D regarding the scope of Rule 7001(1). Rule 7001 lists proceedings that are adversary proceedings and are governed by the Part VII rules. The first item in the list is “a proceeding to recover money or property.” Rule 7001(1). Although that type of proceeding must generally be pursued by an adversary proceeding, Rule 7001(1) contains several exceptions. Among them is “a proceeding to compel the debtor to deliver property to the trustee.” Judge Teel notes that, although the language of that exception largely tracks the language of § 542(a)¹, it fails to include within the exception a proceeding to recover “the value of such property.” As a result, he says, the provision could be read—and has been by at least one court—as allowing a trustee to proceed by motion to recover property of the estate from a debtor, but as requiring the trustee to bring an adversary proceeding to recover the property’s value from the debtor if the debtor has disposed of the property by the time the action is brought. Judge Teel suggests that the provision be amended to permit both types of recoveries to be pursued by motion rather than by adversary proceeding.

¹ Section 542 governs the turnover of property to the estate. Subsection (a) provides in relevant part that “an entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee . . . such property or the value of such property”

The Suggestion was referred to this Subcommittee and was considered during its conference calls on July 26 and November 27, 2012. **The Subcommittee recommends that no further action be taken on the suggestion.**

Rule 7001(1) and Judicial Interpretations of the Exception

As originally promulgated in 1983, Rule 7001(1) did not include the exception that is the subject of Judge Teel's suggestion. The provision did include the other existing exceptions,² which the Committee Note explained as ones not requiring "the formalities of the Part VII rules."

The exception for a proceeding to compel the debtor to deliver property to the trustee was added to the rule in 1987. The Committee Note, as well as the Advisory Committee's report to the Standing Committee, merely stated that the exception was added. They did not provide any explanation of the change or its intended scope.

The Collier treatise has a brief discussion of the exception. 10 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 7001.02[5] (16th ed. 2012). It points out that § 521(a)(4) requires the debtor to surrender property of the estate to the trustee, and § 704(a)(1) imposes the duty on the trustee to collect the property of the estate. The treatise then states, "Where the debtor fails or refuses to surrender property to which the trustee is entitled, the exclusion [in Rule 7001(1)] makes it less cumbersome for the trustee to compel the debtor to deliver such property."

The situation that has caused some confusion in the courts regarding Rule 7001(1) arises when the debtor no longer possesses or has control over the property in question at the time the trustee bring a turnover action. While a majority of courts recognize the right of a trustee under

² Rule 7001(1) also excepts from the category of adversary proceedings "a proceeding under § 554(b) [order to abandon property of the estate] or § 725 [disposition of estate property in which another entity has an interest] of the Code, Rule 2017 [examination of debtor's payments or transfers to attorney], or Rule 6002 [examination of administration by prior custodian]."

§ 542 to seek turnover of the value of the property in that situation, some courts require the subject of the turnover action to remain in possession or control of the property at the time recovery is sought.³ The issue Judge Teel raises, however, is procedural. If a turnover action is permitted even though the debtor has disposed of the property of the estate, what procedure must a trustee use to recover the value of that property from the debtor? Courts are not in complete agreement.

In *In re Borowiec*, 396 B.R. 598 (Bankr. W.D.N.Y. 2008), the chapter 7 trustee filed a motion to compel the debtor to turn over a sum equal to the funds that the debtor had in his checking account at the moment of his bankruptcy filing and that were later applied to the payment of real property taxes. The debtor had delivered a check for the taxes prior to the commencement of the bankruptcy case, but the check was not honored until a few hours after the filing of his petition. The court ruled in the trustee's favor and awarded a judgment for the sum of \$2,700. The court reasoned that "[w]hat the trustee really seeks . . . is not a delivery of estate property, but a quantum meruit recovery from the debtor for the value of a tax payment." *Id.* at 601. This recovery was properly sought by motion, the court held, because the exception in Rule 7001(1) is not limited to turnover actions against debtors. Instead, said the court, "the exception . . . would apply both to a turnover proceeding and to any other request by a trustee for the recovery of property from the debtor, such as under a theory of quantum meruit." *Id.* The court interpreted the Rule 7001(1) exception as allowing the trustee to proceed "by motion to recover

³ Compare *Beaman v. Vandeventer Black, LLP (In re Shearin)*, 224 F.3d 353, 356-57 (4th Cir. 2000); *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re Diversified Prods., Inc.)*, 100 F.3d 53, 56 (7th Cir. 1996); *Jubber v. Ruiz (In re Ruiz)*, 455 B.R. 745, 750-51 (B.A.P. 10th Cir. 2011); *Bailey v. Suhar (In re Bailey)*, 380 B.R. 486, 493 (B.A.P. 6th Cir. 2008) (all allowing the turnover of the value of property of the estate when the property itself was no longer in the defendant's possession); with *Brown v. Pyatt (In re Pyatt)*, 486 F.3d. 423, 428-30 (8th Cir. 2007); *Shapiro v. Henson (In re Henson)*, 449 B.R. 109, 112-13 (D. Nev. 2011) (both requiring defendant to possess property of the estate at the time the turnover proceeding was commenced).

property of any sort and under any theory from the debtor.” *Id.* See also *In re Ruiz*, 455 B.R. 745, 755 (10th Cir. BAP 2011) (holding that the trustee, who had proceeded by motion, was entitled to an order compelling the debtors to turn over cash equaling the amount that had been in their bank account when the bankruptcy petition was filed); *Bailey v. Suhar (In re Bailey)*, 380 B.R. 486, 493 (B.A.P. 6th Cir. 2008) (same).

The court in *In re Price*, 2006 WL 6589883 (Bankr. N.D. Ga. Sept. 20, 2006), interpreted the Rule 7001(1) exception more narrowly. The trustee in that case filed a motion seeking the turnover of (1) funds that had been in debtor’s bank account at the time the case was commenced and (2) certain crystal figurines, which the debtor had valued at \$8,000. The debtor responded that after the commencement of the bankruptcy case most of the bank account had been spent on food and clothing and the figurines had been destroyed during a burglary. The court stated that a “turnover action *by motion* is appropriate . . . only when the debtor has possession of the property of the estate.” *Id.* at *3 (emphasis added). When the estate property being sought is money, however, the court held that, because money is fungible, the debtor could be ordered to turn over “an equivalent amount of cash.” *Id.* The court therefore granted the trustee’s motion seeking recovery of the \$3,321 that had been in the bank account. As for the figurines, the court held that the trustee had to bring an adversary proceeding to recover a money judgment for the figurines’ nonexempt value. The court reasoned that, “when the debtor no longer has possession of the property or its value, the appropriate remedy available to the trustee is a money judgment, which can be obtained only through an adversary proceeding.” *Id.* See also *In re Gentry*, 275 B.R. 747, 751 (Bankr. W.D. Va. 2001) (“If a debtor proves that he is not in possession of the property of the estate or its value at the time that the turnover action is heard, then entry of the turnover

order is precluded. . . . Instead, the trustee is more appropriately entitled to the recovery of a money judgment against the debtor for the value of the property of the estate.”).

Because the *Price* court treated the recovery of cash differently from other types of property, it reached a result that is in fact consistent with *Borowiec*, *Ruiz*, and *Bailey*. But its requirement that an adversary proceeding be brought to recover the value of the figurines rested on a narrower reading of the Rule 7001(1) exception than the *Borowiec* court’s view that the provision allows a trustee to proceed “by motion to recover property of any sort and under any theory from the debtor.”

The Subcommittee’s Consideration of the Suggestion

Although the Subcommittee was at first persuaded by some of Judge Teel’s arguments in support of the proposed amendment of Rule 7001(1), it eventually concluded that the amendment should not be pursued for two reasons. First, the issue that provoked Judge Teel’s suggestion does not appear to have caused much confusion in the courts. There is agreement that a trustee may proceed by motion to seek a turnover from the debtor of property of the estate or proceeds of the property and, when that property is money that the debtor no longer possesses, the turnover of an equivalent amount of money. The only disagreement concerns whether the trustee must proceed by way of an adversary proceeding to recover a money judgment for the value of non-cash property of the estate when neither the property nor its proceeds remain in the debtor’s possession at the time of the turnover action. There is little case law on the question. The one decision that created the issue, *Price*, was an unpublished decision in 2006 that has not been cited for its procedural ruling in any other opinions.

Second, the Subcommittee concluded that a basis exists for limiting the Rule 7001(1) exception to “a proceeding to compel the debtor to deliver property to the trustee.” The general

rule is that an action to recover money or property must be pursued by an adversary proceeding. The only exceptions recognized by Rule 7001(1) involve situations in which the court orders specific property transferred to or from the estate or examines the propriety of actions that may affect the estate. In those situations, the court issues orders that are specific to particular property and are enforceable by means of the court's contempt powers. In contrast, a proceeding to recover a judgment against the debtor for the value of property that the debtor no longer possesses results in a money judgment that is enforceable by execution and levy on any of the debtor's non-exempt property. The Subcommittee concluded that there is a reasonable basis for treating such an action for a money judgment like most other proceedings to recover money or property—with the greater formalities required for an adversary proceeding.

TAB 4D

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Consumer
Comment by Judge Frank

Item 4D will be an oral report.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: CHAPTER 13 FORM PLAN WORKING GROUP
RE: NATIONAL CHAPTER 13 FORM PLAN PROJECT
DATE: MARCH 15, 2013

At its September 2012 meeting in Portland, the Advisory Committee discussed drafts of the form plan and rule amendments prepared by the Chapter 13 Form Plan Working Group. The Advisory Committee also approved a recommendation to hold a mini-conference on the draft plan and rules. That mini-conference, held in January, brought together participants from a broad cross-section of groups interested in the chapter 13 process. The participants included chapter 13 trustees, bankruptcy judges, a court clerk, and representatives of creditors and consumer debtors.

After the Working Group incorporated the input received during the mini-conference, the joint Subcommittees on Consumer Issues and Forms discussed the draft plan and rule amendments during a conference call on March 7, 2013. The joint Subcommittees suggested additional changes but approved the draft plan and rules. **Accordingly, the Working Group recommends that the Advisory Committee seek permission from the Standing Committee to publish the form plan and rules in August 2013.**

This memorandum discusses the mini-conference and the participants' views on key features of the Working Group's approach to the form plan and rules. The memorandum also discusses the current draft of the plan and rules, reflecting changes made by the Working Group since the Advisory Committee's Portland meeting. The Working Group now contemplates that effective implementation of the form plan will require conforming amendments to Rules 2002,

3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009. With respect to Rule 9009, alternative versions of the rule have been proposed for the Advisory Committee's consideration.

The Chicago Mini-Conference

The Working Group convened the mini-conference at the federal courthouse in Chicago on January 18, 2013. The mini-conference was modeled on the workshop-style format used most recently in September for the mini-conference on the new mortgage forms. Two features of that format were particularly valuable and were replicated: (i) providing invited participants with a series of questions, in advance of the conference, to guide their consideration of selected topics about the draft form and rules, and (ii) assigning invited participants to panels responsible for addressing those topics. One panel led the discussion on the form plan itself. A second panel discussed a portion of the draft rule amendments. The third panel did the same for the remaining portion of the rule amendments. An open-forum session at the end of the mini-conference allowed participants to continue discussion on the most significant issues raised during the day.

Discussion of Key Provisions of the Draft Plan and Rules

1. Whether the plan or a contrary proof of claim controls

Participants at the mini-conference raised concerns about a central feature of the draft plan and rules. The draft presented at the mini-conference provided that, in the event of a conflict between the plan and a proof of claim as to the treatment and amount of a claim, the plan would control. This raised a concern about the frequency of cases in which the debtor would list an incorrect amount of a claim on the plan. A number of participants observed that debtors rarely know, for example, the correct amount of the arrearage on mortgages, and therefore the

draft ran the risk of generating frequent objections to confirmation. The discussion suggested that this concern was less acute with respect to other kinds of claims, although several participants observed that the debtor was likely to list incorrect amounts for some categories of priority claims as well.

After the mini-conference, the Working Group adjusted the plan in order to take account of these concerns. The current draft of the plan (§ 3.1) provides that the amounts listed on a proof of claim as to the current installment payment and arrearage for secured claims will control over contrary amounts listed in the plan. The debtor will therefore have to object to the claim to contest those amounts. For other nongovernmental claims, the debtor may propose the amount of a secured claim through the plan. The draft plan (§ 3.2) now frames the determination of the claim's secured status as a request by the debtor for a valuation of security. The draft makes explicit, however, that for the secured claim of a governmental unit, the amount listed on the proof of claim controls over any contrary amounts listed in the debtor's plan, unless otherwise ordered by the court.

With respect to priority claims, the draft plan now provides that the debtor will estimate the amounts of such claims, with proofs of claim controlling over the plan as to those amounts.

2. The bar date for claims

A good deal of discussion focused on the bar date for filing proofs of claim. There was general agreement that the chapter 13 process would benefit from the filing of proofs of claim before plan confirmation. Accordingly, setting the bar date so that it is likely to fall before confirmation was acceptable in principle to the mini-conference participants. Participants also did not express opposition to amending Rule 3002 to clarify that secured creditors must file a proof of claim in order to have an allowed claim. Mortgage servicers, however, explained the

difficulty of filing timely proofs of claim under the Working Group's proposed bar date of 60 days after the filing of the petition. The concern was that although 60 days would be sufficient time to determine certain information, such as the amount of the arrearage on a mortgage, it would not be sufficient time to produce other necessary supporting documents. In particular, the information required by Rule 3001(c)(1) and (d) (that is, the underlying mortgage documentation and evidence that the security interest has been perfected) may be difficult to locate and produce in the required form within that window of time.

The Working Group has altered draft Rule 3002(c) to reflect these concerns. For a claim secured by the debtor's principal residence, the current draft bifurcates the bar date. Draft Rule 3002(c)(2) provides that the proof of claim is timely filed if it is filed within 60 days of the petition date and includes the mortgage form attachment required by Rule 3001(c)(2)(C). The documentation required by Rule 3001(c)(1) and (d), however, may be filed as a supplement not later than 120 days after the petition date.

3. Adequate protection payments

Whether to include within the plan a provision for adequate protection payments generated a good deal of discussion at the mini-conference. Some participants favored including a provision for pre-confirmation adequate protection payments within the plan, but other participants expressed concern about doing so. The concern centered on, among other issues, whether a creditor would be confused about when and how to object in order to challenge the proposed adequate protection payments. In response, a number of participants observed that adequate protection payments are included in chapter 13 plans as a matter of local practice in some parts of the country. Having a separate form for adequate protection payments that could be bundled with the chapter 13 plan was proposed as an alternative.

The Working Group has decided not to include a provision within the plan itself for adequate protection payments. Instead, the alternative route of a separate form is being pursued. The Working Group will propose the creation of a Director's Form for adequate protection payments.

4. The order of distributions and the summary of plan disbursements

The draft plan discussed at the mini-conference provided a blank list for the debtor to propose the order in which the trustee will pay allowed claims. This part of the draft was flagged by a number of participants, who expressed the fear that it would invite mistakes or sharp practice. Some favored a detailed list of distributions in a pre-set order, or the elimination of the blank list in favor of a general statement that distributions will be made in accordance with the Code.

Given the divergence of local practices, especially local practices regarding the payment of attorney's fees, the Working Group did not favor changing the blank list to a detailed order of distributions. Instead, the Working Group has altered the order of distributions (now Part 7) to include the trustee's fees and monthly payments on secured claims but otherwise to leave the list blank.

The Working Group similarly decided to remove the summary of plan disbursements, which had been included as a plan provision. A number of mini-conference participants believed that the provision, while helpful for determining feasibility, added unnecessary length to the plan and should, in any event, reflect that the amounts listed are the debtor's estimates. The Working Group has decided to make the summary of plan disbursements an exhibit of estimated payments by the trustee.

5. Nonstandard provisions

There was general agreement that the plan should provide a place in which the debtor could propose nonstandard provisions. The Working Group has made changes to that part of the plan (now Part 9) and to other portions of the plan to ensure that a debtor clearly indicates the presence of nonstandard provisions and that any nonstandard provision is included only in the appropriate place in the plan. The plan requires the debtor to indicate in a check box on the first page that nonstandard provisions are set out in Part 9. Part 9, in turn, now provides that nonstandard provisions will be effective only if the appropriate box is checked at the beginning of the plan. The Working Group has also added language to the plan's signature box (Part 10) so that the debtor's attorney (or the debtor, if pro se) must certify that the plan is identical to the Official Form, except for nonstandard provisions contained in Part 9.

Rule Amendments Proposed by the Working Group

1. Rule 2002

The Working Group has included an amendment to Rule 2002 as part of the package of amendments accompanying the form plan. That rule currently requires 28 days' notice of the time to file objections to confirmation of a chapter 13 plan. Because the Working Group proposes an amendment to Rule 3015(f) that would require a creditor to file objections to confirmation of a chapter 13 plan at least 7 days before the confirmation hearing, the two rules together would impose a 35-day notice period before the confirmation hearing.

Rule 2002 was not included in the package of proposed amendments discussed by the Working Group at previous meetings of the Advisory Committee. But two concerns have been expressed about the interplay between Rule 2002 and Rule 3015(f). First, parties would need to

cross-reference the two rules in order to calculate the proper time for serving notice of a chapter 13 confirmation hearing, and this might pose a trap for the unwary. Second, the combination of the 7-day pre-hearing deadline for objections to confirmation under Rule 3015(f) and the 28-day notice period for the time to file objections to confirmation under Rule 2002 creates a 35-day notice period for a confirmation hearing, which members of the joint Subcommittees considered unnecessarily long. In particular, when a pre-confirmation modification is required, the 35-day period would be excessive. The Working Group now proposes to retain the 28-day period for notice of a chapter 13 confirmation hearing, but to amend Rule 2002 in light of the new time period in Rule 3015(f). Thus, Rule 2002 would require 21 days' notice of the time to file objections to confirmation.

2. Rule 3002

The current draft of Rule 3002 reflects three changes made since the Advisory Committee's September 2012 meeting in Portland. First, as discussed earlier, Rule 3002(c)'s 60-day bar date has been adjusted to provide additional time to file supporting documentation for mortgage claims. Second, language has been included in Rule 3002(c) to make clear that the bar date runs from the conversion of a case to chapter 12 or chapter 13 (Rule 1019 deals with conversion *from* chapter 12 or 13, but not the reverse). Third, the Working Group has refined the language of the draft that provides an explicit exception to the bar date when the debtor fails to file a timely list of creditors' names and addresses under Rule 1007(a)(1).

3. Rule 3007

The Working Group has proposed an amendment to Rule 3007 to provide an exception to the need to file a claim objection if a determination with respect to that claim is made in connection with plan confirmation under proposed Rule 3012. This amendment, which is

necessary to make parts of the form plan operational, has been retained, but the language has been altered since the Portland meeting. Because draft Rule 3012 will permit the value of certain secured claims to be determined through a plan, the language of draft Rule 3007 now addresses the determination of the amount of a claim (rather than its allowance).

4. Rule 3012

The Working Group proposes to amend Rule 3012 to clarify that the amount of secured claims may be determined in a proposed plan, subject to objection and resolution at the confirmation hearing. Current Rule 3012 provides for the valuation of a secured claim by motion only, and the rule does not address the determination of the amount of a priority claim. A draft amendment to Rule 3012 was discussed at the Advisory Committee's Portland meeting.

Four changes have been made to the proposed language since the Portland meeting. First, the Working Group altered references to “the amount of an allowed secured claim”—the turn of phrase used in the draft discussed in Portland—because the wording might be read to mean the total amount of the allowed claim as well as the secured portion of the claim. That language has been adjusted to refer to “the amount of a secured claim.” Second, as discussed earlier, the Working Group has altered the form plan so that, with respect to the amount of an arrearage, a proof of claim will control over any contrary amount listed in the plan. The current draft of Rule 3012 reflects that change. Third, the draft reflects that the plan will not control the amount of a priority claim. Fourth, and also as discussed earlier, the plan will not control over a contrary proof of claim filed by a governmental unit. Therefore, the current draft has been altered to make clear that it excludes secured claims of governmental units from the category of claims that may be determined in a plan filed in a chapter 12 or chapter 13 case.

5. *Rule 3015*

The Working Group proposes extensive amendments to Rule 3015, which governs the filing of a chapter 13 plan as well as plan modifications and objections to confirmation. Those proposed amendments were discussed at the Portland meeting. They included a provision in Rule 3015(c) requiring use of the Official Form for chapter 13 plans, a new 7-day deadline in Rule 3015(f) for filing objections to confirmation, and an amended subdivision Rule 3015(g) providing when the plan controls over contrary proofs of claim.

Draft Rule 3015(f) differs slightly from the language that was previously proposed. The earlier draft set a 7-day pre-hearing deadline to file objections to confirmation of a plan “unless otherwise ordered by the court.” Members of the joint Subcommittees expressed concern that this qualification was redundant (because Rule 9006 already provides for a court to adjust deadlines in a case) and could lead to unwanted divergence in local practices if courts alter the 7-day period generally by local rule. That language has been removed from the draft, and the Committee Note refers to the court’s ability to adjust deadlines in a particular case under Rule 9006.

Since the Portland meeting, the draft amendment to Rule 3015 has also been changed to reflect the Working Group’s revised approach to the circumstances when the plan will control over a contrary proof of claim. The previous draft of Rule 3015(g) would have provided that a chapter 13 plan controls over a contrary claim as to the validity, amount, and treatment of that claim. The current draft of Rule 3015(g) provides that the plan controls as to the amount of a secured claim under § 506(a) of the Code, in keeping with the revised draft language of Rule 3012.

6. *Rule 4003*

The Working Group proposes an amendment to Rule 4003(d) to provide, in keeping with amended Rule 3012, that chapter 12 and chapter 13 plans may seek the avoidance of liens encumbering exempt property pursuant to § 522(f) of the Code. No changes have been made to the draft version of this rule since the Portland meeting.

7. *Rule 5009*

The Working Group has sought to provide a procedure for the debtor to obtain an order confirming that a secured claim has been satisfied. This may be particularly important to debtors who need, for title purposes, documentation showing that an unsecured second mortgage or other lien has been eliminated.

The language of the draft rule has been changed since the Portland meeting. The earlier draft required the debtor to state, before requesting an order declaring the lien satisfied, that the underlying secured claim was fully paid and any other portion of the claim was discharged. The Working Group decided to alter the language in order to avoid taking a position on the specific prerequisites for lien satisfaction. The Working Group also changed the language of the draft to make clear that it applies to liens encumbering property of the estate.

8. *Rule 7001*

Rule 7001 lists a number of disputes that are required to be conducted by adversary proceeding. Current Rule 7001(2) includes among the list of adversary proceedings a proceeding “to determine the validity, priority, or extent of a lien or other interest in property.” The Working Group proposes that Rule 7001(2) be amended to exclude proceedings under amended Rule 3012, such as determinations of the amount of a secured claim through confirmation of a

chapter 12 or chapter 13 plan. The Working Group has not changed the language of this amendment since the Portland meeting.

9. *Rule 9009*

In order to ensure use of the Official Form chapter 13 plan without significant alterations, the Working Group proposes an amendment to Rule 9009. That rule currently provides that official forms may be “used with alterations as may be appropriate” and with “their contents rearranged.” In an earlier draft of a revised Rule 9009 discussed at the Portland meeting, the Working Group proposed eliminating that language and instead prohibiting changes to specific questions and instructions on official forms unless required to eliminate unnecessary questions and spaces.

After further deliberation, a somewhat different approach to Rule 9009 has emerged. It differs from the earlier draft in three respects. First, the draft rule has been reorganized with separate subdivisions for official forms, director’s forms, and a rule of construction for forms. Second, the draft now contemplates that alterations of official forms may be permitted by the Bankruptcy Rules or by an official form itself. Third, the language regarding reproduction of unnecessary blank space has been restyled to permit a filer to expand or delete space, as appropriate, when responding to an item on a form. That language has also been broadened to require the use of typefaces that are substantially similar in style and size to those used in an official form and to address the permissibility of not reproducing an item on a form when no response is required because the item is not applicable.

On one topic, however, no consensus has been reached about the language of Rule 9009. Some courts alter forms to *add* but not delete language (for example, the addition of a proof of service). Whether amended Rule 9009 should allow that possibility is a question that will be put

to the Advisory Committee. Two versions of the draft rule have been prepared. One version allows local courts to add language to an official form, so long as the unaltered official form is still accepted. The other version would not allow such alterations, so that local courts could adopt separate supplemental forms, but not create alternate versions of the Official Forms.

TAB 5.2

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Debtor(s): _____

Case No.: _____

Date: _____

Check if this is an amended plan

Official Form XXXX Chapter 13 Plan

Part 1: Notice to Interested Parties

Check all that apply:

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.
- The plan sets out nonstandard provisions in Part 9.

Important Notice: Your rights may be affected. Your claim may be reduced, modified, or eliminated.

You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the Plan treatment of your claim or any provision of this Plan, you or your attorney must file an objection to confirmation at least 7 days before the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you must file a proof of claim—or one must be filed on your behalf—in order for you to be paid under any plan that may be confirmed.

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will pay to the trustee \$ _____ per _____ for _____ months, and
\$ _____ per _____ for _____ months.

2.2 Payments to the trustee will be made from future earnings in the following manner:

Check all that apply:

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.

2.3 Additional payments to the trustee will be made as follows:

Check all that apply:

- Debtor(s) will turn over to the trustee:
 - any tax refunds received during the plan term
 - any tax refunds in excess of \$ _____ received during the plan term
- Other sources of funding, including the sale of property. Describe the source, amount, and date when available:

2.4 The estimated total amount of plan payments is \$ _____.

2.5 The applicable commitment period is: 36 months 60 months

3.1 Maintenance of payments and cure of any default

none [if "none" is checked, the rest of § 3.1 need not be completed or reproduced]

The debtor(s) will maintain the contractual installment payments and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan, with interest, if any, at the rate stated. Unless otherwise ordered by the court, (1) the amounts listed on the proof of claim control over any contrary amounts listed below as to the current installment payment and arrearage, and (2) if relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, all payments under this plan as to that collateral will cease and all claims as to that collateral will no longer be treated by the plan. The final column includes only payments disbursed by trustee rather than by the debtor.

Name of creditor	Collateral	Current installment payment (including escrow payment)	Estimated amount of arrearage	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage or other payment arrangement	Estimated total payments by trustee
		\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)				
		\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)				

3.2 Request for valuation of security and claim modification

none [if checked, the rest of § 3.2 need not be completed or reproduced]

This paragraph will only be effective if the applicable box in Part 1 of this plan is checked.

The debtor(s) request that the court determine the value of the secured claims listed below, except for the claims of governmental units. For each non-governmental secured claim as to which a proof of claim has been filed in accordance with Bankruptcy Rule 3001, the debtors state that the value of the secured claim should be as stated below in the column headed "Amount of secured claim." For secured claims of governmental units, unless otherwise ordered by the court, the amounts listed in proofs of claim filed in accordance with Bankruptcy Rule 3001 control over any contrary amounts listed below. For each listed secured claim, the controlling amount of the claim will be paid in full under the plan with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's claim listed on the proof of claim controls over any contrary amounts listed under Part 5 as to the unsecured portion, if any, of the claim.

The holder of any secured claim, other than a claim treated in Part 3, Section 3.1, will retain the lien until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge under 11 U.S.C. § 1328(a), at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

Name of creditor	Estimated amount of creditor's claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments

3.3 Secured claims excluded from 11 U.S.C. § 506

none [if checked, the rest of § 3.3 need not be completed or reproduced]

The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
- (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount listed on the proof of claim controls over any contrary amounts listed below. The final column includes only payments disbursed by trustee rather than by the debtor.

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
				\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	
				\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	

3.4 Lien avoidance

none [if checked, the rest of Section § 3.4 need not be completed or reproduced]

This paragraph will only be effective if the applicable box on Part 1 of this plan is checked.

The judicial liens or nonpossessory, nonpurchase-money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U. S. C. § 522(b). A judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5. The calculation of the amount of the judicial lien or security interest that is avoided is shown on Exhibit A, which is attached to this Plan and incorporated herein by reference. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U. S. C. § 522(f) and Bankruptcy Rule 4003(d).

Name of creditor	Collateral	Amount of secured claim after avoidance	Interest rate (if applicable)	Monthly plan payment (if applicable)	Estimated total amount of secured claim

3.5 Surrender of collateral

none [if "none" is checked, the rest of § 3.5 need not be completed or reproduced]

The debtor(s) elect to surrender to the creditors listed below the personal or real property that is collateral for the claim. The debtor(s) consent to termination of the stay under § 362(a) and § 1301 with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral

Part 4: Treatment of Trustee's Fees and Administrative and Other Priority Claims

4.1 General

All allowed priority claims other than those treated in § 4.5 will be paid in full without interest, unless otherwise stated.

4.2 Trustee's fees

These fees are estimated to be _____% of plan payments; and during plan term, they are estimated to total \$_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney of the debtor(s) is estimated to be \$_____.

4.4 Other priority claims

none [if checked, the rest of § 4.4 need not be completed or reproduced]

The following are the debtor's estimates of the amount of such claims.

Name of creditor	Basis for priority treatment	Estimated amount of claim to be paid	Interest rate (if applicable)	Estimated total amount of payments

4.5 Domestic support obligations assigned to a governmental unit and paid less than full amount

none [if checked, the rest of § 4.5 need not be completed or reproduced]

The allowed priority claims listed below are based on a domestic support obligation that has been assigned to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4).

Name of creditor	Amount of claim to be paid	Interest rate (if applicable)	Estimated total amount of payments

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Maintenance of payments and cure of any default

none [if checked, the rest of § 5.1 need not be completed or reproduced]

The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. The allowed claim for the arrearage amount will be paid under the plan.

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)		
	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)		

5.2 Separately classified nonpriority unsecured claims

none [if checked, the rest of § 5.2 need not be completed or reproduced]

The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

Name of creditor	Basis for separate classification and treatment	Amount of claim to be paid	Interest rate (if applicable)	Estimated total amount of payments

5.3 Nonpriority unsecured claims

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata, up the full amount of the claims, as follows:

Check all that apply:

- the sum of \$ _____, unless a greater amount is required under another checked option;
- _____% of the total amount of these claims;
- the funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7 nonpriority unsecured claims would be paid approximately \$ _____, Payments on allowed nonpriority unsecured claims will not be less than this amount.

5.4 Interest

Interest on allowed unsecured claims, other than separately classified nonpriority unsecured claims, will (check the applicable box):

- Not be paid
- Be paid at an annual percentage rate of _____% under 11 U.S.C. § 1325(a)(4), and is estimated to total \$ _____.

Part 6: Executory Contracts and Unexpired Leases

6.1 All executory contracts and unexpired leases are rejected, except those listed below, which are assumed and will be treated as provided for below or under another specified provision of the plan.

none to be assumed [if checked, the rest of § 6.1 need not be completed or reproduced]

The final column includes only payments disbursed by trustee rather than by the debtor.

Name of creditor	Property description	Treatment (Refer to other plan section if applicable)	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
			\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)		
			\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)		

Part 7: Order of Distribution of Trustee Payments

7.1 The trustee will make payments in the estimated amounts shown on Exhibit B, in the following order:

- a. Trustee's fees
- b. Monthly payments on secured claims
- c.
- d.
- e.
- f.
- g.
- h.

Part 8: Vesting of Property of the Estate

8.1 Property of the estate shall revert in the debtor(s) upon

Check the applicable box:

- Plan confirmation
 Closing of case
 Other: _____


Part 9: Nonstandard Plan Provisions

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below. These plan provisions will only be effective if the applicable box in Part 1 of this plan is checked.

Part 10: Signatures

The debtor's attorney (or debtor, if not represented by an attorney) certifies that all provisions of this plan are identical to the Official Form XXX, except for language contained in Part 9 - "Nonstandard Plan Provisions."

Debtors
(Sign if not represented by an attorney)



 Signature of debtor


Date _____
MM / DD / YYYY



 Signature of debtor

Date _____
MM / DD / YYYY

Debtors' Attorney



 Signature of debtor's attorney

Date _____
MM / DD / YYYY

Chapter 13 Plan Exhibits

Exhibit A - Calculation of lien avoidance

A.1 The judicial lien or nonpossessory, nonpurchase-money security interest provided for in Section 3.4 is avoided to the extent listed below: *Do not complete if the plan involves no lien avoidance; if more than one lien is to be avoided, provide the information for each lien.*

Name of creditor	Collateral	Judgment lien information (such as judgment date, date of lien recording, book and page number)	Calculation of lien avoidance
			a. Amount of lien \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions \$ _____ d. Total: Lines a + b + c = line d \$ _____ e. Value of debtor's interest in property \$ _____ f. Subtract line e from line d \$ _____ Extent of exemption impairment (Check applicable box): <input type="checkbox"/> Line f is equal to or greater than line a. The entire lien is avoided. <input type="checkbox"/> Line f is less than line a. A portion of the lien is avoided. Amount of lien not avoided: Subtract line f from line a \$ _____

Exhibit B - Estimated amounts of trustee payments

B.1 The trustee will make the following estimated payments on allowed claims in the order set forth in Section 7.1:

a. Current installment and arrearage payments on secured claims (Part 3, Section 3.1 total):	\$ _____
b. Allowed secured claims (Part 3, Section 3.2 total):	\$ _____
c. Secured claims not subject to 11 U.S.C. § 506 (Part 3, Section 3.3 total):	\$ _____
d. Judicial liens or security interests not avoided (Part 3, Section 3.4 total):	\$ _____
e. Administrative and other priority claims (Part 4 total):	\$ _____
f. Current installment payments and arrearage payments on unsecured debts (Part 5, Section 5.1 total):	\$ _____
g. Separately classified unsecured claims (Part 5, Section 5.2 total):	\$ _____
h. Nonpriority unsecured claims (Part 5, Section 5.3 total):	\$ _____
i. Interest on allowed unsecured claims (Part 5, Section 5.4 total)	\$ _____
j. Arrearage payments on executory contracts and unexpired leases (Part 6, Section 6.1 total)	\$ _____
Total of a through j	\$ _____

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COMMITTEE NOTE

This Official Form [XXX] is new and is the required plan form in all chapter 13 cases. See Bankruptcy Rule 3015. Alterations to the text of the form or the order of its provisions, except as indicated on the form itself, are prohibited. See Bankruptcy Rule 9009. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced.

Part 1. This part is intended to highlight some provisions of the plan for the benefit of interested parties and the court. For that reason, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 9 of the plan proposes a provision not included in, or contrary to, the Official Form, then that nonstandard provision will be ineffective if the appropriate check box is not selected.

Part 2. This part states the proposed periodic plan payments, plan length, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments accordingly, that should be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make payments. The debtor may also make payments through a designated third party, such as an electronic funds transfer program.

Part 3. This part provides for the treatment of secured claims.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage amount listed on the creditor's proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of secured claims for which a proof of claim has been filed. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a nongovernmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. See Bankruptcy Rule 3012. Although § 3.2 applies to secured claims for which a proof of claim has been filed in accordance with Bankruptcy Rule 3001, that rule contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. See Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for an interest rate other than the contract rate to be applied to payments on such a claim.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). A separate exhibit shows the calculation of the amount of the judicial lien or

security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. See Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and consent to termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of claims entitled to priority status. In § 4.4, the plan calls for an estimated amount of each such claim. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in the plan.

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.3, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or also provide that a defined percentage of the total amount of unsecured claims will be paid.

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part.

Part 7. This part provides an order of distribution of payments under the plan. Other than the trustee's fees and monthly payments to secured creditors, the order of distribution is left to be completed by the debtor in keeping with the requirements of the Code. A separate exhibit lists the estimated amounts of these distributions.

Part 8. This part defines when property of the estate will revert in the debtor or debtors. One choice must be selected—upon plan confirmation, upon closing the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 9. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or are contrary to, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. See Bankruptcy Rule 3015.

Part 10. The plan must be signed by the attorney for the debtor or debtors, unless the debtor or debtors are not represented by an attorney, in which case the plan must be signed by the debtor or debtors. The signature in this part is a certification to the court that the plan's provisions are identical to the Official Form, except for any nonstandard provisions contained in Part 9.

TAB 5.3

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Preliminary Discussion Draft of Forms for Pre-confirmation Adequate Protection Payments

**Notice of Proposed Adequate Protection Payments,
Order for Adequate Protection Payments and Opportunity to Object**

The Debtor through Counsel, states as follows:

1. On _____, the Debtor(s) filed a petition under Title 11 commencing a Chapter 13 case.
2. The debtor proposes to make adequate protection payments, pursuant to §1326 (a) (1) (c) beginning no later than 30 days after the petition date, to the holders of the allowed secured claims and in the amounts specified below:

Secured Creditor	Collateral Description	Adequate Protection Payment

3. The proposed adequate protection payments shall be made, until the debtor’s plan is confirmed, in the following manner:
 - (a) The Trustee will disburse the payments monthly from the plan payments received from the debtor.
 - (b) The debtor will disburse the payments monthly, and will (1) reduce the plan payments made to the Trustee and (2) provide evidence of such payment to the Trustee, such as a copy of a check or money order, that includes the date and amount of the payment.
 - (c) Other: _____.

Dated: _____

Debtor

By: _____
Counsel

Approved: _____
Chapter 13 Trustee

I, _____, Counsel for the Debtor, hereby certify that I have today, the ____ day of _____, _____, mailed a copy of (this) (the foregoing) Notice of Adequate Protection and Order _____ to the following Creditor(s) in the following manner: (Name and address of creditors served)

Order for Adequate Protection Payments and Opportunity to Object

This case coming before the Court on the Debtor's notice of Proposed Adequate Protection Payments, It is hereby ordered that the Debtor or Trustee is authorized to make the Adequate Protection Payment as set for therein.

IF A CREDITOR OR OTHER PARTY IN INTEREST HAS ANY OBJECTION TO THE ADEQUATE PROTECTION PAYMENTS DETAILED IN THIS ORDER, A WRITTEN OBJECTION MUST BE FILED WITH THE U.S. BANKRUPTCY COURT CLERK WITHIN 21 DAYS OF THE DATE THIS ORDER IS ENTERED.

Dated: _____

United States Bankruptcy Judge

TAB 5.4

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Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

1 (a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as
2 provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other
3 person as the court may direct, shall give the debtor, the trustee, all creditors and
4 indenture trustees at least 21 days' notice by mail of:

5 * * * * *

- 6 (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); ~~and~~
7 (8) the time fixed for filing objections and the hearing to consider confirmation of
8 a chapter 12 plan; and
9 (9) the time fixed for filing objections to confirmation of a chapter 13 plan.

10
11 (b) TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as
12 provided in subdivision (l) of this rule, the clerk, or some other person as the court may
13 direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than

- 14 (1) 28 days' notice by mail of the time fixed ~~(4)~~ for filing objections and the
15 hearing to consider approval of a disclosure statement or, under §1125(f), to make
16 a final determination whether the plan provides adequate information so that a
17 separate disclosure statement is not necessary; ~~and~~
18 (2) 28 days' notice by mail of the time fixed for filing objections and the hearing
19 to consider confirmation of a chapter 9; or chapter 11; or chapter 13 plan; and
20 (3) 28 days' notice by mail of the time fixed for the hearing to consider
21 confirmation of a chapter 13 plan.

COMMITTEE NOTE

Subdivisions (a) and (b) are amended and reorganized to alter the provisions governing notice under this rule in chapter 13 cases. Subdivision (a)(9) is added to require at least 21 days' notice of the time for filing objections to confirmation of a chapter 13 plan. Subdivision (b)(3) is added to provide separately for 28 days' notice of the date of the confirmation hearing in a chapter 13 case. These amendments conform to amended Rule 3015, which governs the

time for presenting objections to confirmation of a chapter 13 plan. Other changes are stylistic.

Rule 3002. Filing Proof of Claim or Interest

1 (a) ~~NECESSITY FOR FILING. An unsecured creditor or an equity~~
2 ~~security holder must file a proof of claim or interest for the claim or interest to be~~
3 ~~allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A secured~~
4 ~~creditor, unsecured creditor, or equity security holder must file a proof of claim or~~
5 ~~interest for the claim or interest to be allowed, except as provided in Rules~~
6 ~~1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is~~
7 ~~not void due only to the failure of any entity to file a proof of claim.~~

8 (b) PLACE OF FILING. A proof of claim or interest shall be filed in
9 accordance with Rule 5005.

10 (c) TIME FOR FILING. In a voluntary chapter 7 ~~liquidation~~ case, chapter
11 ~~12 family farmer's debt adjustment~~ case, or chapter 13 ~~individual's debt~~
12 ~~adjustment~~ case, a proof of claim is timely filed if it is filed not later than ~~90~~ 60
13 days after the date of the filing of the petition or the date of the order of
14 conversion to a chapter 12 or 13 case, and in an involuntary chapter 7 case, a
15 proof of claim is timely filed if it is filed not later than 90 days after the entry of
16 the order for relief, the first date set for the meeting of creditors called under §
17 341(a) of the Code, except as follows:

18 * * * * *

19 (6) If the debtor fails to timely file the list required by Rule 1007(a)
20 containing the name and address of a creditor included or to be included
21 on Schedules D, E, F, G, and H as prescribed by the Official Forms, or if
22 notice of the time to file a proof of claim has been mailed to a creditor at a
23 foreign address, on motion filed by the creditor before or after the
24 expiration of the time, the court may extend the time by not more than 60
25 days from the date of the court's determination if the court finds that the
26 notice was insufficient under the circumstances to give the creditor a
27 reasonable time to file a proof of claim.

28 (7) A proof of claim filed by the holder of a claim that is secured by a
29 security interest in the debtor's principal residence is timely filed if

30 (A) the proof of claim, together with the attachments required by
31 Rule 3001(c)(2)(C), is filed not later than 60 days after the entry of
32 the order for relief, and

33 (B) any attachments required by Rule 3001(c)(1) and (d) are filed
34 as a supplement to the holder's claim not later than 120 days after
35 the entry of the order for relief.

COMMITTEE NOTE

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to 60 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 60-day time for filing runs from the order of conversion. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim. For a claim secured by an interest in the debtor's principal residence, a proof of claim must be filed with the appropriate Official Form mortgage attachment within 60 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the

120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to the proof of claim.

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Rule 3007. Objections to Claims

1 (a) OBJECTIONS TO CLAIMS. An objection to the allowance of a
2 claim shall be in writing and filed. ~~A~~ Except to the extent that a determination of
3 the amount of a claim is made under Rule 3012 in connection with plan
4 confirmation in a chapter 12 or 13 case, a copy of the objection with notice of the
5 hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor
6 or debtor in possession and the trustee at least 30 days prior to the hearing.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to provide that an objection to a claim is unnecessary if the determination of the amount of the claim is made through a chapter 12 or chapter 13 plan in accordance with Rule 3012.

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Rule 3012. ~~Valuation of Security~~ Determination of the Amount of Secured and Priority Claims

1 ~~The court may determine the value of a claim secured by a lien on property in~~
2 ~~which the estate has an interest on motion of any party in interest and after a hearing on~~
3 ~~notice to the holder of the secured claim and any other entity as the court may direct.~~

4 (a) DETERMINATION OF AMOUNT OF CLAIM. On request of a party in
5 interest and after notice—to the holder of the claim and any other entity designated by the
6 court—and a hearing, the court may determine

7 (1) the amount of a secured claim under § 506(a) of the Code, or

8 (2) the amount of a claim entitled to priority under § 507 of the Code.

9 (b) REQUEST FOR DETERMINATION; HOW MADE. Except as
10 provided in subdivision (c), a request to determine the amount of a secured claim
11 may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or
12 13 case. A request to determine the amount of a claim entitled to priority may be
13 made by motion or in a claim objection. The request shall be served on the holder
14 of the claim and any other entity designated by the court in the manner provided
15 for service of a summons and complaint by Rule 7004.

16 (c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the
17 amount of a secured claim of a governmental unit may be made by motion or in a
18 claim objection after a proof of claim has been filed by the governmental unit or
19 after the time for filing a proof of claim under Rule 3002(c)(1) has expired.

COMMITTEE NOTE

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a

claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 ~~Family Farmer Debt Adjustment~~ or a Chapter 13 ~~Individual's Debt Adjustment~~ Case

1 (a) FILING OF CHAPTER 12 PLAN. The debtor may file a chapter 12
2 plan with the petition. If a plan is not filed with the petition, it shall be filed within
3 the time prescribed by § 1221 of the Code.

4 (b) FILING OF CHAPTER 13 PLAN. The debtor may file a chapter 13
5 plan with the petition. If a plan is not filed with the petition, it shall be filed within
6 14 days thereafter, and such time may not be further extended except for cause
7 shown and on notice as the court may direct. If a case is converted to chapter 13, a
8 plan shall be filed within 14 days thereafter, and such time may not be further
9 extended except for cause shown and on notice as the court may direct.

10 (c) ~~DATING. Every proposed plan and any modification thereof shall be~~
11 ~~dated.~~ FORM OF CHAPTER 13 PLAN. The plan filed in a chapter 13 case shall
12 be prepared as prescribed by the appropriate Official Form. Provisions not
13 otherwise included in the Official Form or deviating from provisions of the
14 Official Form shall not be effective unless they are included in a section of the
15 Official Form that is designated for non-standard provisions and are also
16 identified in accordance with any other requirements of the Official Form.

17 (d) ~~NOTICE AND COPIES. If the plan~~ The plan or a summary of the plan
18 ~~shall be~~ is not included with the each notice of the hearing on confirmation mailed
19 pursuant to Rule 2002, the debtor shall serve the plan on the trustee and all
20 creditors when it is filed with the court. If required by the court, the debtor shall
21 ~~furnish a sufficient number of copies to enable the clerk to include a copy of the~~
22 ~~plan with the notice of the hearing.~~

23 (e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall
24 forthwith transmit to the United States trustee a copy of the plan and any
25 modification thereof filed pursuant to subdivision (a) or (b) of this rule.

26 (f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD
27 FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation

28 of a plan shall be filed and served on the debtor, the trustee, and any other entity
29 designated by the court, and shall be transmitted to the United States trustee,
30 ~~before confirmation of the plan~~ at least seven days before the hearing on
31 confirmation. An objection to confirmation is governed by Rule 9014. If no
32 objection is timely filed, the court may determine that the plan has been proposed
33 in good faith and not by any means forbidden by law without receiving evidence
34 on such issues.

35 (g) EFFECT OF CONFIRMATION. Any determination made under Rule
36 3012 of the amount of a secured claim under § 506(a) of the Code in a chapter 12
37 or 13 case shall be binding on the holder of the claim notwithstanding any
38 contrary proof of claim filed by the holder in accordance with Rule 3001 or any
39 scheduling of that claim by the debtor pursuant to § 521(a) of the Code, whether
40 or not any objection has been filed to the claim under Rule 3007.

41 ~~(g)~~ (h) MODIFICATION OF PLAN AFTER CONFIRMATION. A
42 request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify
43 the proponent and shall be filed together with the proposed modification. The
44 clerk, or some other person as the court may direct, shall give the debtor, the
45 trustee, and all creditors not less than 21 days notice by mail of the time fixed for
46 filing objections and, if an objection is filed, the hearing to consider the proposed
47 modification, unless the court orders otherwise with respect to creditors who are
48 not affected by the proposed modification. A copy of the notice shall be
49 transmitted to the United States trustee. A copy of the proposed modification, or a
50 summary thereof, shall be included with the notice. ~~If required by the court, the~~
51 ~~proponent shall furnish a sufficient number of copies of the proposed~~
52 ~~modification, or a summary thereof, to enable the clerk to include a copy with~~
53 ~~each notice.~~ If a copy is not included with the notice and the proposed
54 modification is sought by the debtor, a copy shall be served on the trustee and all
55 creditors in the manner provided for service of the plan by subdivision (d) of this
56 rule. Any objection to the proposed modification shall be filed and served on the
57 debtor, the trustee, and any other entity designated by the court, and shall be

58 transmitted to the United States trustee. An objection to a proposed modification
59 is governed by Rule 9014.

COMMITTEE NOTE

This rule is amended and reorganized.

Subdivision (c) is amended to require use of the Official Form for chapter 13 plans. The amended rule also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official Form specifically designated for such provisions and identified in the manner required by the Official Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan in advance of confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan. The seven-day notice period may be altered in a particular case by the court under Rule 9006.

Subdivision (g) is amended to provide that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012.

Subdivision (h) was formerly subdivision (g). It is redesignated and amended to clarify that service of a proposed plan modification must be made in accordance with subdivision (d) of this rule.

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Rule 4003. Exemptions

* * * * *

1 (d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT
2 PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of
3 property exempt under § 522(f) of the Code shall be commenced by motion in the
4 manner provided for by in accordance with Rule 9014 or by a chapter 12 or 13
5 plan served in the manner provided by Rule 7004 for service of a summons and
6 complaint. Notwithstanding the provisions of subdivision (b), a creditor may
7 object to a motion or chapter 12 or 13 plan provision filed under § 522(f) by
8 challenging the validity of the exemption asserted to be impaired by the lien.

COMMITTEE NOTE

Subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt property may be made by motion or by a chapter 12 or chapter 13 plan. A plan that proposes lien avoidance in accordance with this rule must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not governed by this rule requires an adversary proceeding.

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Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases; Order Declaring Lien Satisfied

1 (a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a
2 chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final
3 account and has certified that the estate has been fully administered, and if within
4 30 days no objection has been filed by the United States trustee or a party in
5 interest, there shall be a presumption that the estate has been fully administered.

6 * * * * *

7 (d) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter
8 13 case, if a claim that was secured by property of the estate is subject to a lien
9 under applicable nonbankruptcy law, the debtor may request entry of an order
10 determining that the lien as to that property has been satisfied. The request shall
11 be made by motion and shall be served on the holder of the claim and any other
12 entity designated by the court in the manner provided by Rule 7004 for service of a
13 summons and complaint. An order entered under this subdivision shall be
14 effective as a release of the lien.

COMMITTEE NOTE

Subdivision (d) is added to provide a procedure by which a debtor in a chapter 12 or chapter 13 case may request an order declaring a lien satisfied. A debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate. Although requests for such orders are likely to be made at the time the case is being closed, the rule does not prohibit a request at another time if the lien has been satisfied and any other requirements for entry of the order have been met.

Other changes to this rule are stylistic.

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Rule 7001. Scope of Rules of Part VII

1 An adversary proceeding is governed by the rules of this Part VII. The
2 following are adversary proceedings:

3 * * * * *

4 (2) a proceeding to determine the validity, priority, or extent of a lien or
5 other interest in property, ~~other than~~ not including a proceeding under Rule 3012
6 or Rule 4003(d);

* * * * *

COMMITTEE NOTE

Subdivision (2) is amended to provide that the determination of the validity, priority, or extent of a lien under Rule 3012 or Rule 4003(d) does not require an adversary proceeding. The determination of the amount of a secured claim may be sought through a chapter 12 or chapter 13 plan in accordance with Rule 3012. Thus, a debtor may propose to eliminate a wholly unsecured junior lien in a chapter 12 or chapter 13 plan without a separate adversary proceeding. Similarly, the avoidance of a lien on exempt property may be sought through a chapter 12 or chapter 13 plan in accordance with Rule 4003(d). An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

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Rule 9009. Forms (version 1)

1 (a) OFFICIAL FORMS. ~~Except as otherwise provided in Rule 3016(d), the~~ The
2 Official Forms prescribed by the Judicial Conference of the United States shall be
3 ~~observed and used with alterations as may be appropriate~~ without alteration, except as
4 otherwise provided in these rules, or in a particular Official Form. Official Forms may be
5 modified

6 (1) to use font faces substantially similar to those prescribed, maintaining the
7 prescribed size and style;

8 (2) to expand the prescribed areas for responses in order to permit complete
9 responses;

10 (3) to delete space not needed for responses;

11 (4) to delete items requiring detail in a question or category if the filer indicates—
12 either by checking “no” or “none” or by stating in words—that there is nothing to
13 report as to that question or category; and

14 (5) for court orders in a particular case only, to make any change that does not
15 conflict with an applicable rule or with an Official Form that the order addresses
16 or implements. ~~Forms may be combined and their contents rearranged to permit~~
17 ~~economies in their use.~~

18 (b) DIRECTOR’S FORMS. The Director of the Administrative Office of the
19 United States Courts may issue additional forms for use under the Code.

20 (c) CONSTRUCTION. The forms shall be construed to be consistent with these
21 rules and the Code.

COMMITTEE NOTE

This rule is amended and reorganized into separate subdivisions.

Subdivision (a) addresses permissible modifications to Official Forms. It requires that an Official Form be used without alteration, except when another rule or the Official Form itself permits alteration. The former language generally permitting alterations has been deleted, but the rule preserves the ability of a filer

to modify an Official Form to use a typeface substantially similar to the prescribed size and style, to expand or delete the space for responses as appropriate, and to delete inapplicable items so long as the filer indicates that no response is intended. For example, when more space will be necessary to completely answer a question on an Official Form without an attachment, the answer space may be expanded. On the other hand, many Official Forms indicate on their face that certain changes are not appropriate. The Official Form chapter 13 plan, for example, requires that topics be addressed in a particular order, and that nonstandard provisions be addressed in a specified section of the plan. Any changes that contravene the instructions on the Official Form chapter 13 plan would be prohibited by this rule.

The rule permits modification of court orders included in the Official Forms, provided that the modification does not conflict with any applicable rule or Official Form. For example, the court may add an additional provision to the Order Approving Payment of Filing Fee in Installments, which is part of Official Form 3A.

The creation of subdivision (b) and subdivision (c) is stylistic.

Rule 9009. Forms (version 2)

1 (a) OFFICIAL FORMS. ~~Except as otherwise provided in Rule 3016(d), the~~ The
2 Official Forms prescribed by the Judicial Conference of the United States shall be
3 ~~observed and used with alterations as may be appropriate~~ without alteration, except as
4 otherwise provided in these rules, or in a particular Official Form. Official Forms may be
5 modified

6 (1) to use font faces substantially similar to those prescribed, maintaining the
7 prescribed size and style;

8 (2) to expand the prescribed areas for responses in order to permit complete
9 responses;

10 (3) to delete space not needed for responses; and

11 (4) to delete items requiring detail in a question or category if the filer indicates—
12 either by checking “no” or “none” or by stating in words—that there is nothing to
13 report as to that question or category.

14 (5) unless the Official Form or these rules provide otherwise, to permit—but not
15 require—the use of a local form that incorporates the Official Form; and

16 (6) for Official Form court orders, unless the Official Form or these rules provide
17 otherwise, to alter the order in a particular case. ~~Forms may be combined and~~
18 ~~their contents rearranged to permit economies in their use.~~

19 (b) DIRECTOR’S FORMS. The Director of the Administrative Office of the
20 United States Courts may issue additional forms for use under the Code.

21 (c) CONSTRUCTION. The forms shall be construed to be consistent with these
22 rules and the Code.

COMMITTEE NOTE

This rule is amended and reorganized into separate subdivisions.

Subdivision (a) addresses permissible modifications to Official Forms. It requires that an Official Form be used without alteration, except when another rule or the Official Form itself permits alteration. The former language generally permitting alterations has been deleted, but the rule preserves the ability of a filer to modify an Official Form to use a typeface substantially similar to the prescribed size and style, to expand or delete the space for responses as appropriate, and to delete inapplicable items so long as the filer indicates that no response is intended. For example, when more space will be necessary to completely answer a question on an Official Form without an attachment, the answer space may be expanded. On the other hand, many Official Forms indicate on their face that certain changes are not appropriate. The Official Form chapter 13 plan, for example, requires that topics be addressed in a particular order, and that nonstandard provisions be addressed in a specified section of the plan. Any changes that contravene the instructions on the Official Form chapter 13 plan would be prohibited by this rule.

The rule permits modification of court orders included in the Official Forms, provided that the modification does not conflict with any applicable rule or Official Form. For example, the court may add an additional provision to the Order Approving Payment of Filing Fee in Installments, which is part of Official Form 3A.

The creation of subdivision (b) and subdivision (c) is stylistic.

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TAB 6A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

RE: STATUS REPORT ON FOLLOW-UP FROM MINI-CONFERENCE ON HOME MORTGAGE FORMS AND RULES

DATE: MARCH 12, 2013

On December 1, 2011, amendments to Rule 3001(c), new Rule 3002.1, and new Official Forms 10A, 10S1, and 10S2 went into effect. These rules and forms were promulgated to ensure that debtors and trustees are fully informed of the basis for home mortgage claims and of the amounts that must be paid to cure any arrearages and to make payments in the proper amount on home mortgages during chapter 13 cases. They require a home mortgage creditor to provide more detailed information in support of its proof of claim and, during the course of a chapter 13 case, to give notice of any changes in the ongoing payment amount and of the assessment of any fees, expenses, and charges. Rule 3002.1 also provides a procedure for obtaining information about the status of a home mortgage at the conclusion of a chapter 13 case.

The Mini-Conference

The Advisory Committee held a mini-conference on September 19, 2012, to explore the effectiveness of the new rules and forms and to consider whether any adjustments to the requirements might be advisable. The Committee invited fifteen participants, consisting of attorneys for consumer debtors and for mortgage servicers, chapter 13 trustees, bankruptcy judges, and a bankruptcy clerk. The participants were asked to discuss a set of issues that the Committee identified in advance of the conference, including the following:

- *Balancing amount and cost of disclosure.* Do the rules and forms strike the optimal balance between disclosure of useful information and the cost of producing the information?
- *Best procedures.* Can there be improvements in the procedures for disclosing the required information and for resolving any disputes about amounts claimed by creditors, arising both before and after the bankruptcy filing?
- *Technical and administrative issues.* Have any administrative or technical problems been encountered in completing or filing the forms?
- *Possible ambiguities.* Are there ambiguous provisions of the rules or forms that need to be amended by the Rules Committee rather than left to judicial interpretation?

The mini-conference revealed general acceptance of the disclosure requirements.

Participants expressed a desire, however, to eliminate ambiguities in the rules and forms and to make some adjustments to facilitate compliance and the provision of additional information. Some participants agreed to continue discussions with each other after the mini-conference in order to arrive at consensus recommendations for the Committee. They were invited to submit supplemental information, and the Committee received several post-conference submissions.

Subsequent Consideration of Issues by the Subcommittees

The Subcommittees have been considering the feedback that was provided at the mini-conference and evaluating whether any amendments to the home mortgage rules or forms need to be pursued. During a joint conference call on December 5, 2012, members discussed the major issues raised during the mini-conference. The Subcommittees concluded that some of those issues are likely to be resolved over time as courts and affected parties become more familiar with the new requirements and a body of case law develops. Others, however, merit the

Committee's consideration. Of greatest significance is the suggestion that a detailed loan payment history be attached to a home mortgage proof of claim in a format that can be automated. The Subcommittees acknowledged that arriving at a recommendation will require the resolution of a number of issues, including (1) at what point in the life of a loan a required history should start; (2) whether a loan history should supplement or replace existing Attachment A; (3) in what format a loan history should be provided; and (4) whether there are logistical barriers that would prevent some mortgage servicers from being able to comply with such a requirement.

Participants at the September mini-conference representing mortgage servicers emphasized the need for any loan-history requirement to be applied uniformly throughout the country. They stated that the costs of creating software that can produce the required information in a standard, automated format will be sufficiently large that a loan-history requirement will not be feasible unless local variations in the information sought or format required are prohibited.

The Subcommittees concluded that before a loan-history attachment is required for home mortgage claims, Rule 9009 should be amended. That rule, which governs the use of Official Forms, currently allows "alterations [in the forms] as may be appropriate," including combining forms and rearranging their contents. Because the adoption of a national form chapter 13 plan presents same need for uniformity in the implementation of Official Forms, the Chapter 13 Form Plan Working Group is proposing an amendment of Rule 9009. The Subcommittees are awaiting further developments on that rule amendment before proceeding with any amendments to the home mortgage forms.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS
RE: SUGGESTION REGARDING FEE WAIVERS UNDER 28 U.S.C. § 1930(f)(3)
DATE: MARCH 10, 2013

David Yen, an attorney at the Legal Assistance Foundation of Chicago, submitted a suggestion (11-BK-N) regarding the waiver of bankruptcy fees other than the ones that Rule 1006(c) and Official Form 3B currently address. That rule and form govern the waiver of filing fees by chapter 7 individual debtors, as authorized by 28 U.S.C. § 1930(f)(1).¹ Subsection (f)(2) of that statute authorizes the district court or bankruptcy court to waive other fees prescribed by the Judicial Conference for “such debtors”—that is, debtors who qualify for a filing-fee waiver under (f)(1). And subsection (f)(3) provides that subsection (f) “does not restrict the district court or the bankruptcy court from waiving . . . fees prescribed under this section for other debtors and creditors.”

Mr. Yen proposed that procedures and Official Forms be adopted for (1) chapter 7 debtors who have qualified for a filing-fee waiver and who seek the waiver of additional fees, and (2) debtors not entitled to a filing-fee waiver under § 1930(f)(1) and creditors who seek fee waivers.

At the fall 2012 meeting, the Advisory Committee concluded that a national form to implement fee waivers under § 1930(f)(2) is not needed because eligible debtors would have

¹ Subsection (f)(1) of 28 U.S.C. § 1930 permits the waiver of the filing fee in a chapter 7 case for an individual debtor who has income “less than 150 percent of the income official poverty line . . . applicable to a family of the size involved” if the debtor is unable to pay that fee in installments. “Filing fee” is defined as the fees required to be paid to the clerk upon the commencement of a chapter 7 case.

already provided the court the financial information called for in Official Form 3B. The Committee, however, directed these Subcommittees to draft a Director’s Form that could be used by courts for fee waivers under § 1930(f)(3).

In considering a possible *in forma pauperis* form to implement § 1930(f)(3), the Subcommittees identified two potential problems with issuing such a form at this time. First, as discussed at the fall meeting, the statute appears not to provide an affirmative grant of authority for bankruptcy courts to grant fee waivers. Instead, it states that subsection (f) “does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.” In other words, it removes any implication that, by authorizing the waiver of fees for certain debtors, § 1930(f) precludes fee waivers for all other debtors and for creditors. But that waiver authority must be found elsewhere. *See Bernegger v. King*, 2011 WL 1743880 at *2 (E.D. Wis. May 6, 2011) (“§ 1930(f)(3) does not provide the authority to waive fees nor does it reference where such authority exists”). *But see In re Richmond*, 247 Fed. App’x 831, 832 (7th Cir. 2007) (stating in *dicta* that after the enactment of § 1930(f), “the bankruptcy and district courts clearly have the authority to allow creditors to proceed *in forma pauperis*”).²

Second, § 1930(f)(3) refers to fee waivers “in accordance with Judicial Conference policy.” The current Judicial Conference policy on fee waivers is limited to chapter 7 debtors. In 2005 the Judicial Conference adopted Interim Procedures Regarding Chapter 7 Fee Waiver Provisions. The procedures primarily address fee waivers under § 1930(f)(1), but they also state

² Courts are split on whether bankruptcy courts may allow parties to proceed *in forma pauperis* under 28 U.S.C. § 1915. *Compare In re Richmond*, 247 Fed. App’x 831 (7th Cir. 2007) (without deciding whether bankruptcy courts are “courts of the United States” for purposes of § 1915, holding that district courts may refer authority to bankruptcy courts under § 157(a) to grant *in forma pauperis* motions); *with Perroton v. Gray (In re Perroton)*, 958 F.2d 889 (9th Cir. 1991) (holding that bankruptcy courts are not “courts of the United States” for purposes of § 1915 and thus lack authority to waive statutorily required filing fees).

that “[o]ther fees scheduled by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) may be waived in the discretion of the bankruptcy court or district court for individual debtors whose filing fee has been waived.” The interim procedures do not contain any reference to waiver of fees for creditors or for debtors who are not entitled to a fee waiver under § 1930(f)(1).

The Judicial Conference’s Committee on the Administration of the Bankruptcy System is currently considering a revision of the interim fee waiver procedures. The most recent draft of the revision does not address fee waivers under § 1930(f)(3).

In light of the ongoing revision of the Judicial Conference’s fee waiver guidelines and the current absence of any Judicial Conference policy for waivers under § 1930(f)(3), the Subcommittees are not bringing forward at this meeting a national waiver form to implement that provision. **Instead, they recommend that the Committee refrain from acting further on a Director’s Form for fee waivers under § 1930(f)(3) until a Judicial Conference policy on this type of waiver is issued.**

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Forms Modernization Project status report
Publication of remaining individual FMP forms

Item 7A and proposed new Official Forms, Committee Notes, and Instructions
will be distributed separately.

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TAB 7B

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TAB 7B.1

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS MODERNIZATION PROJECT

RE: INITIAL PUBLICATION OF MODERNIZED FORMS -
COMMENTS ABOUT THE PROJECT GENERALLY AND FORMS
3A, 3B, 6I, AND 6J

DATE: MARCH 15, 2013

A. Background

The first group of restyled individual debtor forms—Official Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22-B, 22C-1, and 22C-2—were published for public comment in August 2012.¹ Twenty-nine sets of comments that address the forms were submitted by the February 15 deadline, and one other letter was informally submitted to the working group. Attached to this memorandum are summaries of all of the comments that were submitted regarding proposed Official Forms 3A, 3B, 6I, and 6J, as well as general comments on the overall modernization project. The purpose of this memorandum is to review the major comments and the changes suggested in response to those comments. In addition to the major comments, there are numerous specific comments, some of which led to non-substantive changes in the forms that are not highlighted in this memorandum. A separate memorandum will review the comments on the proposed means test forms (22A-2, 22-B, 22C-1, and 22C) and the response to those comments.

B. General Comments

¹ Under the new form numbering system, the published forms may be redesignated at a later date. The numbering system will be discussed in the memorandum updating the Committee on the Forms Modernization Project.

Comments on the overall project and the published forms in general fall primarily into the following categories:

- support for the new forms;
- dislike of the new forms and a preference for maintaining the current forms;
- concern that the forms contain too much shading, too much white space, and too many pages;
- concern that the forms will encourage pro se filings, to the detriment of the debtors and the courts; and
- the need for a clear statement about the extent to which software-generated forms can deviate from the graphic and formatting styles of the proposed forms, including the omission of instructions that are provided in the format of checkboxes and the omission or collapsing of inapplicable sections.

The members of the Forms Modernization Project (FMP) discussed these comments during its March 1, 2013 meeting. The group considered the most fundamental question—whether the project should proceed notwithstanding the negative commentary. After reviewing the reasons for the project, and the guiding principles behind the redesign, the group decided that the project should proceed.

In response to the numerous comments about shading, the group recommends that shading should largely be eliminated. The group explored options for a new format for division of the parts of each form that would both reduce the size of the bold black banners and preserve the visual breaks of each form. Ultimately the group decided to retain the black banner for the “part” designation, but to use a different format for the title of each part. Shading was largely

eliminated in the balance of each of the forms. These changes will reduce toner usage and increase the ease with which forms are printed and reproduced.

The group discussed whether efforts should be made to reduce the page length of the forms. The increase in the page length is a function of several factors. First, in an effort to increase accuracy and ease of use and to create a form whose answers can populate a usable database of answers, more specific questions are posed, and the debtor is often prompted to provide an answer. Second, rather than providing a dense set of instructions at the beginning of the form and then blank space for the answers, these forms provide instructions where the debtor is likely to need them. Third, more space is provided to answer some of the questions. Fourth, examples are often included to help the debtor understand what information is being requested. The group felt that these changes were likely to provide more accurate usable information. The forms often direct the debtor to skip inapplicable questions or sections. The ability of debtors to truncate answers—when the questions either do not apply or have been fully answered—may reduce the length of many of the filed forms.

The extent to which software-generated forms may deviate from the official forms is relevant to other forms as well as the modernized forms. Proposed revised Rule 9009, which is part of the chapter 13 form plan and rules package included with these materials, provides additional guidance regarding the extent to which software-generated forms may deviate from the official forms.

Whether the plain English and ease of use of the modernized forms will encourage more filing without the assistance of counsel has been the subject of discussion since the beginning of the FMP. The preparation of comprehensive instructions that explain the magnitude of what the

bankruptcy will require and provide ample warnings about the significance of the forms, and the possible consequences of inadequate filings, should discourage, not encourage, pro se filings. In addition, members of the FMP believe that it is important that forms be understandable to all debtors, including those who are represented, because debtors are required to sign the forms under penalty of perjury. The comments did not change those views.

C. Comments on Official Form 3A (Application for Individuals to Pay the Filing Fee in Installments)

Only two comments address this form specifically. Both of them suggest the need to add to the form the option of paying a chapter 13 filing fee through the debtor's plan. Districts differ on whether they permit this practice, and the current form does not expressly provide this option. In view of the fact that the practice is far from universal and the bankruptcy system has been able to accommodate the practice when it is followed, the group decided to once again remain silent regarding whether such an option existed.

Line 2 of the published form states that a debtor may ask the court to extend the deadline for payment of the final fee installment, but it says that the debtor must explain why an extension is needed. One comment notes that no space is provided for the explanation. Because the group contemplated that such an extension would continue to require a separate later application, and in order to avoid any confusion, reference to the potential of an extension was moved from the form to the instructions. This is consistent with the form currently in effect, which merely informs the debtor of the possibility of obtaining an extension "for cause shown" and does not ask the debtor to provide reasons for the extension as part of the application.

Two comments address the signature box. The first one questions why the attorney must

sign the form in addition to the debtor. The current form also requires the attorney to sign, and Rule 9011 states that an attorney must sign every “petition, pleading, written motion, and other paper, except a list, schedule, or statement or amendments thereto.” The group agreed that the attorney-signature requirement is appropriate.

The other comment proposes deletion of the instruction not to pay “anyone else in connection with your bankruptcy case” until the entire filing fee is paid. The comment notes that this statement would prohibit a debtor from making payments to a chapter 13 trustee before all of the installment payments are made. The published form changes the wording of the current form slightly, but in a way that gives rise to this comment. Current Form 3A includes the statement, “Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person *for services* in connection with this case” (emphasis added). The group decided that the comment should be addressed by reinserting “for services” in the statement.

D. Comments on Official Form 3B (Application to Have the Chapter 7 Filing Fee Waived)

Five comments were submitted regarding this form, in addition to the ones that expressed support for Mr. Oney’s comment. Several of them suggest that certain information asked for on the proposed form be omitted because of its irrelevance to the waiver decision. The following information is suggested for deletion:

- line 3, non-cash government assistance;
- lines 12-16, various assets that the debtor owns;
- line 19, payment for bankruptcy services by someone else; and
- line 20, prior bankruptcy filings by the debtor or the debtor’s spouse.

The form currently in effect asks for the second and third categories of information, and the group decided to continue requesting such information. The current form also asks for prior bankruptcy filings by the debtor, but not by the debtor's spouse unless the spouse is also filing. After discussion the group decided that the comment was well-taken and that the request for information about prior filings should be limited to filings by the debtor(s), not by a non-filing spouse.

How non-cash government assistance should be handled generated the most discussion. The amount of non-cash government assistance is not specifically asked for on current Form 3B. It asks for the total combined monthly income as computed on Schedule I. Published modernized Schedule I (line 8f) asked debtors to include the value of “[o]ther government assistance.” Immediately preceding line 8f, it asks for “unemployment compensation” and “Social Security,” which might suggest to some debtors that “other government assistance” refers only to other forms of cash assistance. In ruling on a fee waiver application, it is important for a judge to know whether the amount of the debtor's stated income includes non-cash governmental assistance. The interim regulations of the Judicial Conference of the United States regarding the chapter 7 fee waiver provisions of Title 28 direct that, “Non-cash governmental assistance (such as food stamps or housing subsidies) is not included [in income].”²

The comments caused the group to rephrase the request for information about governmental assistance on both Schedule 3B and Schedule I and to harmonize the two forms.

² II.A.3. of the Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

In completing Schedule 3B, the debtor is permitted to use the income calculated on Schedule I. Because Schedule I has been revised to direct the debtor to include non-cash governmental assistance in income to the extent that the debtor knows the value of such assistance,³ on Schedule 3B it is necessary to have the debtor first report the amount of income including the value of non-cash assistance, and then to deduct the value of such assistance to determine the amount of income for purposes of the fee waiver application. In response to comments that the debtor does not always know the value of non-cash governmental assistance, both Schedule 3B and Schedule I have been revised to clarify that the debtor only needs to include the value of such assistance to the extent known.

One comment suggested that additional information should be sought on the form: (1) whether the debtor's current financial condition results from unusual circumstances, and (2) whether anyone who was not paid assisted the debtor in the preparation of the form. In response, the group decided that there should be clarification on line 5 that the debtor explain any "additional circumstances that cause [debtor] to not be able to pay [debtor's] filing fee in installments."

Some questioned why six months is a relevant time period for possible changes to the debtor's income and expenses. These questions are carryovers from current Form 3B. The time period equals the maximum period for paying the filing fee in installments, so anticipated changes to the debtor's income or expenses during that period may be relevant to the court's consideration of whether to deny waiver in favor of payment in installments. The group rejected making any changes to the time period.

³ Sums paid with such assistance are often included in the expenses listed on Schedule J.

E. Comments on Official Form 6I (Schedule I: Your Income)

Fourteen comments specifically address Schedule I, including the informal comment from Best Case.

Several comments address the treatment of non-filing spouses. Some want the instruction in the current form about non-filing spouses to be retained in the proposed form. They either want debtors to know that they generally must include information about a non-filing spouse or that they do not have to include information about a non-filing spouse if they are separated. Others suggest that the heading “Debtor 2 or non-filing spouse” will cause confusion about when to include a spouse if the case is not a joint filing. These comments were addressed by adding the following instruction at the beginning of the form: “If you are married, not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse.” There are two columns on Schedule I, one for Debtor 1 and one for Debtor 2 or non-filing spouse. There are four possible scenarios for married couples and the new instruction directs as follows: joint filing/not separated - both columns completed, joint filing/separated (your question) - both columns completed, single spouse filing/not separated - both columns completed, single spouse filing/separated - only Debtor 1 column is completed.

The treatment of non-cash government benefits is raised with respect to this form also. It is suggested that Schedule I ask specifically for this information because many debtors will not realize that they are supposed to include these benefits as income. One comment states that if those benefits are included here, it will be easier for the debtor to complete the fee waiver form. The pertinent line was revised in response in order to be more specific and to make clear that the

value of non-cash assistance only needs to be included to the extent known. New line 8f. reads:

Other government assistance that you regularly receive

Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies.

Specify: _____

One comment points out that line 5b. allows for the deduction from income of contributions to retirement plans without distinguishing between voluntary and involuntary ones. It is suggested that trustees are likely to take issue with this deduction. The FMP accepted that it would be helpful to distinguish between mandatory and voluntary retirement contributions. Line 5b was changed to “[m]andatory contributions for retirement plans” and a new line 5c was added for “[v]oluntary contributions for retirement plans.”

A couple of comments want information about dependents returned to Schedule I. One argues that doing so fits the income/expense data better across the two forms (Schedule I and J). Other commenters liked the move of dependents from Schedule I to Schedule J, and the group decided to leave dependents on Schedule J.

A new specific payroll deduction for “domestic support obligations” was added on line 5f. in response to a comment that such deductions are common. The number of lines for “other deductions” was reduced in order to keep the form from growing longer than necessary.

There was a suggestion that projected changes in income only be reported if they are at least 10%. The 10% threshold was eliminated in 2005 in response to the addition of § 521(a)(1)(vi) of the Bankruptcy Code, which requires that the debtor file “a statement disclosing *any* reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition.” (emphasis added)

F. Comments on Official Form 6J (Schedule J: Your Expenses)

Fifteen comments specifically address Schedule J, including the informal comment from Best Case.

The part of the proposed form drawing the most comment is column B in part 2 (“For Chapter 13 Only – What your expenses will be if your current plan is confirmed”). Several commenters state that this column and its instructions are confusing and will not be understood by pro se debtors. Some predict that debtors will just restate the numbers they include in column A. Another says it calls for speculative information that is not required by the Bankruptcy Code. One commenter notes that, if the purpose is to implement *Lanning* and *Ransom*, the information should be sought in Form 22 instead of here. Moreover, she points out, a similar adjustment is not asked for in Schedule I. Another comment states that if column B is retained, it should apply to all chapters, not just to chapter 13, assuming that the purpose is to show the debtor’s pre- and post-petition expenses. Another commenter sees the purpose as eliminating expenses of secured debts that the chapter 13 trustee will pay. If that is correct, he says, a pro se debtor will not understand it. Finally, one comment proposes that a new form be created to capture proposed budgets for chapter 11, 12 and 13 debtors; that form could ask for forward-looking projections.

Two changes were made in response to these comments. First, column B in part 2 was eliminated. Second, in order to permit those districts that currently allow debtors to use revised Schedules I and J to update their income and expense information, a new option was added to both forms where the debtor can indicate that the information on the form is a “supplement as of the following post-petition date:_____.”

Although several comments approved of the move of information about dependents to

this form, stating that Schedule J is the more logical placement, questions were raised about the need for three separate questions about dependents, and one commenter questioned the reason for line 3 (“Does anyone else live in your household?”). In response, the FMP suggests the following changes to Part 1. First, questions 1 and 2 on the published form should be combined into a single question asking about all of the debtor(s)’s dependents, regardless of whether the dependents live with the debtor. Second, question 3 should be clarified so that its financial purpose is clear. In the published form question 3 asked, “Does anyone else live in your household?” New question 3 should ask, “Do your expenses include expenses of people other than yourself and your dependents?”. The question has been converted to a simple “yes/no” format. If the debtor’s Schedule J reveals that it includes expenses for people other than the debtor and the debtor’s dependents, interested parties may investigate further if warranted.

Several comments question the inclusion of student loan payments as an expense deduction on line 17c. It is asserted that this represents a policy decision that student loans can continue to be paid without constituting unfair discrimination in chapter 13. Another comment notes that there are not lines for the deduction of restitution payments, payments on other nondischargeable debts, or co-signed loans. A third comment states that student loans are an appropriate expense in chapter 7 cases, but that many trustees and courts object to including these payments in chapter 7 and chapter 13 budgets. It would be better, it is suggested, to instruct debtors that student loan payments can be listed under the “other” category if appropriate. The category of student loans as a distinct line item was eliminated. Debtors who are paying student loans as an expense may still list those payments as an “other” installment payment on line 17.

One comment raises issues about the treatment of non-filing spouses on this form. The instructions say to include a non-filing spouse's expenses unless the couple is separated. Then it says, "If one of you keeps a separate household, fill out separate *Schedule J* for Debtor 1 and Debtor 2 and write *Debtor 1* or *Debtor 2* at the top of page 1 of the form." The concern expressed is twofold. First, being listed as "debtor 2," even though the spouse did not file for bankruptcy, may have a negative credit-reporting effect. The label could cause credit-reporting agencies to assume that the spouse is in bankruptcy. Second, the instructions seem contradictory. The instruction says to identify a non-filing spouse as "debtor 2," but the box at the top of page 1 identifies "debtor 2" as "spouse, if filing." If information must be provided for a non-filing spouse, there is no place to put it. In response the FMP recommends changing the instructions and also making it clear on the form that a separate Schedule J is required only if it is joint case and the debtors are separated. The former is accomplished by changing the pertinent instructions to read:

If you are married and are filing individually, include your non-filing spouse's expenses unless you are separated.

If you are filing jointly and Debtor 1 and Debtor 2 keep separate households, fill out a separate *Schedule J* for each debtor. Check the box at the top of page 1 of the form for Debtor 2 to show that a separate form is being filed.

The circumstance when a spouse must file a separate Schedule J is clarified on the form; separated spouses are not required to file two Schedule Js unless they jointly file bankruptcy. There is no requirement that a separated non-filing spouse must file a Schedule J. Proposed new question 1 affirmatively asks if debtor 2 lives in a separate household. If so, that debtor is directed to file a separate Schedule J. The right side of the caption contains a check-box that will allow quick identification of a Schedule J filed by debtor 2.

G. Conclusion

While a number of changes are recommended in response to the comments, the FMP does not think that the changes are so significant as to require republication of the revised forms. The FMP recommends that the Committee ask the Standing Committee to approve Forms 3A, 3B, 6I, and 6J for implementation, with an effective date of December 1, 2013.

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General Comments on the Published Individual Forms

12-BK-002—Joseph T. Bambrick – This is an excellent improvement to the current forms. I will use the proposed forms as a work sheet until they become official. I only regret the delay in implementing the forms and wish they could be used on an interim basis.

12-BK-006—Raymond P. Bell, Jr. – I commend the working group for the drafts. The forms and instructions are more user friendly. I still disagree with the means test forms, as I have from their inception.

12-BK-007—Brian Flick – The proposed forms will be costly to print because of the gray shading and imbedded text. My biggest concern is that the simplification of these forms will discourage people from hiring competent counsel and encourage the use of petition preparers. The courts are already clogged with pro se debtors.

12-BK-008—National Conference of Bankruptcy Judges – The NCBJ applauds and endorses the revisions to the forms. They are more user friendly than the existing forms, and they are readable, easy to fill out and easy to understand. They are a significant improvement.

12-BK-012—Walter Oney¹ – Technical comments. **A.** Eliminate the shaded background on the forms. The shading will increase the amount of toner or ink required for printing the forms and will slow down printing on ink-jet equipment. **B.** The forms use too many fonts, which will increase space requirements and upload/download times. Use only the standard Type 1 fonts. **C.** Capitalize the word “page” in the footer and eliminate the shaded background. **D.** Use consistent typography throughout the forms. **E.** While we should not be encouraging pro-se filings, making the forms more understandable is a worthy goal. Attorneys will use software to generate forms. Those forms do not have to have the same features that are needed to elicit correct responses from individuals who will be completing the forms on their own. Enunciate a clear policy about how closely software-generated forms have to mimic the published official forms.

Comments on contents. **A.** The instruction to put “your name” at the top of each sheet is ambiguous, and the phrase “top of any additional pages” is ungrammatical. Change all instructions to say, “Place Debtor 1’s name and your case number at the top of each additional page.” **B.** Change “if known” regarding the case number to “if your case has been filed.” Pro se debtors may interpret the current instruction literally and not provide the case number if they misplaced it or did not write it down. **C.** Do not include a form of proposed order with any of the forms. Courts differ in the format of captions on orders, and many require proposed orders to be uploaded in a word processing format to special email addresses. **D.** The signature blocks should be revised to read, “By signing here, I declare under penalty of perjury that the information provided in this _____ is true and complete to the best of my knowledge and belief.” In the published forms, the phrase “under penalty of perjury” is misplaced. Some of the forms require projections that are not unambiguously true or false, or legal conclusions whose accuracy the debtor should not be required to certify on pain of criminal sanctions.

¹ Other comments expressing agreement with Mr. Oney: 12-BK-007, -019, -021, -023, -030, -039, -041.

12-BK-016—David R. Hagen – The proposed forms are too complicated. They try to be everything for everyone. They will encourage pro se filers to make mistakes to their detriment. They will increase the task for debtor’s counsel, thereby increasing the costs of representation. They will make review by trustees more time consuming. The required information could be included in fewer pages.

12-BK-017—Dean A. Langdon – Expanding the length of the forms will be more costly and environmentally harmful. Remove redundancies and unnecessary information requests. More official forms should be fillable online. The concept of requiring physical forms and documents is becoming outmoded.

12-BK-019—Penny Souhrada – The addition of shading, black backgrounds, and extra space will result in excessive use of ink and paper. The appearance of the forms will give pro se debtors a false sense of security. They will file without understanding the Code. That will negatively affect their future and increase time demands on courts. The instructions cannot provide a pro se debtor all the legal information needed.

12-BK-022—Mathew Alden – No changes should be made to the current forms. The proposed forms are not that big of an improvement. Constantly changing the forms requires constant changes to software.

12-BK-024—John A. Flynn – I absolutely hate the new forms. It’s just more pages for the same information. Stop trying to fix things that aren’t broken.

12-BK-030—Jeanne Hovenden – While I applaud the goal of trying to improve the forms, the proposed forms do not achieve that goal. The shaded portions of the forms will cause issues with faxing them and will increase the file sizes of PDFs. The Committee’s efforts have resulted in some minor improvements, but the Bankruptcy Code is too complicated to put into terms a lay person can understand. The chance of a pro se debtor properly completing these forms is close to zero.

12-BK-032—Lorraine P. Troyer – It is important that the forms be as short as possible and that there not be grey space or blacked out areas. These features do not make the forms more useful, but they make them more expensive to print and prepare. It all adds up.

12-BK-039—Caralyce M. Lassner – Eliminate shading and multiple font styles. Neither feature makes the forms more user friendly or more disclosure friendly. Shading may increase difficulty of use for individuals with certain disabilities and will increase costs of printing and copying. While I applaud the effort to make the forms more easily understood, I believe the drafters need to step back and take a fresh review of the proposals.

12-BK-041—Daniel Press – Pro se filings should not be facilitated. They should be discouraged because they often lead to harm to the debtors and disruption of the courts. The existing forms have worked well.

12-BK-042—Joe Wittman – The proposed forms attempt to do more than is really needed. If the goal is to deal with pro se filers, it is misguided because no one should file a chapter 13 case without representation.

12-BK-044—Louis M. Bubala – I strongly support the revisions to the individual debtor forms. The proposed changes add clarity to the financial disclosures of debtors.

12-BK-045—David S. Yen – While it would be better if debtors did not file pro se, such filings are going to continue, so I support the efforts to make the forms more user friendly for pro se debtors. When the complete forms packet is finalized, it should contain strong warnings about the consequences of imprudent filings, the complexity of bankruptcy proceedings, the advisability of obtaining legal counsel, and the possible availability of free or low cost legal services. I am concerned that the proposed forms may increase the costs for software developers, which will then be passed on to nonprofit agencies that represent debtors or to debtors represented by private attorneys. I am skeptical of the alleged benefits that are supposed to ensue from making it easier to collect data from the forms. Changes to the bankruptcy laws in recent years have not been driven by data. Moreover, an increase in pro se filings will make the data less reliable.

12-BK-046—National Association of Consumer Bankruptcy Attorneys – There is too much white space, and there are too many pages. Grayed background and black bars will waste toner. It is unnecessary to repeat the full basic case information on the first page of each form. Putting an “x” everywhere there is a signature line will be confusing to the debtor; let the attorney put an “x” where a debtor needs to sign. Make the space for signatures larger. The layout of the new forms makes them more difficult to read, and the use of simpler language does not ensure that a pro se debtor will understand the meaning of words in the context of a bankruptcy form. It should be made clear that graphic and formatting styles can be altered and that inapplicable sections of the forms can be collapsed.

Carl Barnes – Best Case comments (not officially submitted) – I found it very frustrating working with the new forms. **A.** The new forms implement many instructions as yes/no checkboxes. I would like an explicit statement that these are instructions and that computer generated forms may omit them under Rule 9009. **B.** Remove shading to define regions, and use lines instead as the current forms do. Shaded forms will slow down scanning, result in larger PDF files, make faxed forms difficult to read, and increase toner costs. **C.** Remove white text on black. Change to a lined rectangle with black text. **D.** The forms are too long and contain too much white space. **E.** There are too many checkboxes. Requiring both the checking of a “no” box and the filling in of “\$0” is a request for duplicate data. **F.** Reformat the “Fill in this information to identify your case” block to use less vertical space. Allow it to use the full width of the page.

Comments on Official Form 3A

12-BK-012—Walter Oney² -- Because a few districts have chapter 13 plans that assume that the debtor will be paying part of the filing fee through the plan, the Committee should decide whether to approve that practice. If so, the form should add options under Part 1: “I elect to have the filing fee paid by the Chapter 13 Trustee from my plan payments” or “I am not filing under Chapter 13, or I elect to pay the filing fee myself.”

Line 2. The form does not provide a space for a debtor to explain why an extension of the final date for payment is needed.

Line 2. The instruction states that “You must propose to pay the entire fee no later than 120 days after you first file for bankruptcy.” Change the last clause to “after you file this bankruptcy case.” Otherwise, a debtor might interpret “first file” as referring to a prior case.

Part 2. It is not clear why the debtor’s attorney is asked to sign the form.

12-BK-046—National Association of Consumer Bankruptcy Attorneys – In Part 2 (“Sign Here”), delete “or anyone else” because chapter 13 debtors will often be making payments to the chapter 13 trustee while their filing fee installments are still be paid.

Add an option of paying the filing fee installments through a chapter 13 plan. Many districts currently allow that practice. It avoids the difficulties of separate payments by the debtor and collection challenges for the clerk.

² Other comments expressing agreement with Mr. Oney: 12-BK-007, -019, -021, -023, -030, -039, -041.

Comments on Official Form 3B

12-BK-012—Walter Oney³ -- Because the instructions to part 3 say to skip it if Schedules A and B have been completed, the instruction at the beginning of the form should say, “Unless otherwise directed by the instructions for this form, Answer every question.”

Line 1. The checkboxes should be in the column preceding the line for total number of persons. Switch order.

Lines 2 and 3. The instructions about non-cash governmental assistance are confusing. The Schedule I information that may be incorporated here includes the value of non-cash assistance, so the debtor needs to be instructed to subtract that value before filling out line 2. The explanation for what constitutes non-cash assistance called for in line 3 is included at line 2. Reverse the order of lines 2 and 3.

Line 2. Schedule I does not capture all of the family income that 28 U.S.C. § 1930(f)(1) contemplates, and a pro se debtor is unlikely to know what to include. The committee should make a policy decision about how much (if any) income needs to be shown on the form.

Line 2. The committee should make a policy decision about whether the form should reflect the holding of *In re Donahue*, 410 B.R. 751 (Bankr. N.D. Ga. 2009), that expenses for domestic support obligations should be subtracted from income in determining eligibility for a fee waiver.

Lines 4 and 9. It is not clear why 6 months is a relevant time period for possible changes in income and expenses. Most chapter 7 cases are over in 3 months, and installment payments generally have to be completed in 120 days. Either eliminate both questions, or combine them into one question about whether the debtor might be able to save enough during the 90 days after the petition to permit payment of the fee in full.

Part 2 – The information sought duplicates Schedule J, except for expected changes during the next 6 months. If the previous recommendation is accepted, the debtor could be instructed to provide a copy of Schedule J rather than completing Part 2.

Line 6 – Substitute “estimate” for “estimation.” The latter word means the process of arriving at an estimate.

Line 8. Substitute “these persons” for “this person.” There is no space to list contributions.

Line 10. Formatting issue noted.

Lines 11-14. The layout of these lines will be hard for software-generated forms to mimic. (Mr. Olney includes an alternative layout.)

³ Other comments expressing agreement with Mr. Oney: 12-BK-007, -019, -021, -023, -030, -039, -041.

Lines 12-16. Consider omitting these questions. Apparently the reason for asking about these assets is to determine if the debtor could liquidate them in order to pay the filing fee. If so, liens that might be avoided under § 522(f) should not be subtracted from the values. But because these assets are property of the estate, the debtor won't be able to liquidate them until the trustee abandons them, and that won't happen until after the fee is paid.

Line 15. To clarify what should be listed, the form might specify the lines of Schedule B from which information should be obtained.

Line 16. A single question about the likelihood of receipt of payment will be confusing if there is more than one listing for money or property due the debtor. (Mr. Oney also proposes a rewording and reformatting that will make it easier for software to capture the information.)

Lines 17-19. Add instruction to check all applicable boxes. More than one yes answer may be applicable.

Line 20. Omit this question. The statute does not condition a fee waiver on the debtor not being a serial filer. It also duplicates the question in Official Form 1 about filings within the prior 8 years. It is not relevant to a fee waiver application whether a non-filing spouse has filed for bankruptcy.

Consider adding a line for calculating 150% of the applicable poverty guidelines. This information might be helpful to the court. Pro se debtors should be instructed not to complete this line.

12-BK-013—Judge James D. Walker, Jr. (Bankr. M.D. Ga.) – Two questions should be added to the form: (1) “Is your current financial situation the result of unusual circumstances? If yes, explain.” (2) “Has anyone assisted you in the preparation of this form? If yes, what is your relationship to that person?” The first question, which should be inserted as the first item on the form, would allow a judge to gain information necessary for deciding whether to grant a waiver – i.e. the circumstances that led to the bankruptcy filing and whether those circumstances are likely to be temporary or permanent. The second question should be added to part 4. The form does not ask if the debtor has received uncompensated assistance. The answer to that question could help the judge gauge the reliability of the information reported. For example, it may reveal that the debtor was assisted by an attorney acting pro bono.

12-BK-019—Penny Souhrada – I do not believe that the Code requires information to be revealed about whether someone else paid for the services of an attorney or petition preparer. Will the court follow up by reviewing the listed person's finances and asking that person to help pay the debtor's debts?

12-BK-045—David S. Yen – The first question in part 1 should be revised. Unlike the current form, it does not instruct not to include a spouse if the debtor is separated and not filing jointly. The “check all that apply” list includes “you,” which suggests that not checking that box is an option. The inquiry about family members in this form is inconsistent with the family inquiry in Schedule J, which says not to include Debtor 1 and Debtor 2. The question does not capture

information about an adult living with the debtor who is neither a spouse nor a dependent. (Mr. Yen proposes a revision of the question.)

Part 1, question 2 should be retained, but question 3 should be deleted. It is difficult to put a dollar value on non-cash government benefits, such as Medicaid, free or reduced price lunches, and public housing benefits. Instead of asking this question, revise question 6 (“Estimate your average monthly expenses”) to instruct that “If some of your expenses are paid for by non-cash government assistance such as food stamps or housing subsidies, list only the cash that your household spends on the subsidized items.” As revised, this question addresses the relevant issue—the ability of the debtor to come up with cash.

Question 20 should be revised to ask about previous bankruptcy cases of debtor 1 and debtor 2, not about a “spouse,” who may not be filing with the debtor.

The Order on the Application to Have the Chapter 7 Filing Fee Waived should include a space for stating the reasons for a denial when the waiver is denied without a hearing. It should also indicate that, if the waiver is denied and circumstances change or the reasons for the denial no longer apply, the debtor can ask the court to reconsider the denial.

12-BK-046—National Association of Consumer Bankruptcy Attorneys – There is not a need to ask about non-cash government housing assistance. The debtor is unlikely to know the value of the assistance. Moreover, the difference between market rent and the subsidized amount the debtor pays does not indicate anything about the debtor’s ability to pay the filing fee.

The current form seems cleaner and easier to read and fill out.

Comments on Official Form 6I

12-BK-007---Brian Flick – Schedule I is too long, and the information requested is redundant. Use the existing Schedule I and change only the payroll expense itemization to include liens for retirement loans and retirement deductions.

12-BK-008---National Conference of Bankruptcy Judges – The revision deletes language contained in the current Schedule I that says, “The column labeled ‘Spouse’ must be completed in all cases filed by joint debtors and by every married debtor whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.” This language should be restored so that the “spouse” column is completed in every case. This would provide more complete disclosure and continue existing practice, and also conform the revised Form 6I to the instructions for filling out the form.

12-BK-12---Walter Oney –

Form Contents

1. Line 1. Married debtors will not easily understand when they should report their spouse’s income. The form should use a series of questions with check-box answers, similar to Lines 2 and 3 on revised Form B22A, to help debtors determine whether they need to report their spouse’s income. See the Strawman Form 6I (attached to comment) with suggested check-box answers.
2. Line 1. Why does the form call for an employer’s address? Which of many possible addresses is the one required? Debtors may be reluctant to provide their employment address in a publicly accessible document for fear of harassment. Debtors are required to furnish copies of their pay stubs, so trustees will nearly always have a way to locate an employer if they need to. Do not require debtors to furnish their employer’s address. If the address is required, specify what address debtors should provide - the workplace, the payroll department, or what.
3. Line 1. Debtors should not have to indicate whether they are students or homemakers. Unemployed debtors who are students or homemakers will not be reporting income from these activities. The form instructions can be read to require that employed debtors who are also students or homemakers attach a separate page simply to indicate that status. Self-employed debtors should not have to fill out part 1, which will simply require them to provide their own contact information, which is captured on Form B1, and the duration of their self-employment, which is captured on the SOFA. Asking for self-employment information in part 1 will also lead to confusion as to whether self-employment income should be listed on lines 2-7, line 8a, or both. Do not mention seasonal employment in the instruction, because it will confuse debtors who are not presently working at a seasonal job, and the instruction apparently conflicts with the instruction to report income “as of the date you file this form.”
4. Lines 2-7. It is unlikely that pro se filers will be able to reliably combine their income from multiple jobs with different pay periods, as the revised form directs. The instructions about how to determine a monthly income are overwhelmingly confusing, even for a filer who has only one job. This could result in pro se filers going to a petition

- preparer. The form should be reorganized to capture information about each job separately. See the Strawman Form 6I for a possible way to do this.
5. Line 5c. Under case law in the 6th Circuit, chapter 13 debtors should be deemed to realize additional disposable income once they finish repaying retirement plan loans. The form should ask when a payroll deduction for repaying a retirement loan is scheduled to end.
 6. Line 5d. There should be separate lines for health insurance, disability insurance, and health savings plan payroll deductions. Health insurance has a special status under both bankruptcy and non-bankruptcy law, so it should not be combined on the form with other insurance deductions. Listing them separately would allow collection of the information for use in the means test. See the Strawman Form 6I, lines 2a-5b through 2a-5d.
 7. Line 8. Payroll information and other income are very different things, but the form design seems to equate them. For example, line 7 flows into line 8 without any separation. There should be a major “part” break inserted between the lines and the lines renumbered. See the Strawman Form 6I, Part 2.
 8. Line 8a. The instructions are confusing. The form calls for “[n]et income from rental property and from operating a business . . .,” but then asks only for “ordinary and necessary business expenses” to be shown on an attachment. The instructions for Schedule J tell debtors to net out business income and expenses on Schedule I. But, because Schedule J captures most of the expenses of owning real estate, debtors are **not** supposed to net out their real estate income and expenses. The implicit distinction in the instructions for line 8a is so subtle that debtors are likely to miss it. Real estate and business expenses should be treated the same way: either net both of them out on Schedule I, or require income and expenses in both categories to be reported on Schedules I and J, respectively. Strawman Form 6I breaks them into two questions, lines 4 and 5.
 9. Line 8a. The term “rental property” is unnecessarily restrictive, because debtors might earn income from real estate that is not “rent,” *e.g.*, Conservation Reserve Program (soil bank) payments.
 10. Line 8a. Debtors often lack even rudimentary bookkeeping skills, so asking them to attach a statement concerning real estate and business income is problematic. There should be a form for reporting business and real estate income expenses, such as the one used in the Southern District of Indiana. Alternatively, debtors could be directed to use their bookkeeping software to generate a profit and loss statement covering a specific time period.
 11. Line 8e. Use the phrase “benefits under the Social Security Act” for consistency with the means test, and to make clear to pro se debtors that their “social security” income on this schedule is the same as the “benefits under the Social Security Act” they are supposed to exclude from the means test. See Strawman Form 6I, line 9.
 12. Line 8f. All non-cash government benefits should be shown in Schedule I, which will make it easier for pro se debtors to complete the fee waiver form. Debtors may not realize that they are supposed to report as income items such as food stamps, housing subsidies, WIC vouchers, and fuel assistance that they receive in kind or directly.
 13. Line 11. Joint filers who live in separate households may each be receiving contributions to their separate household expenses from other people. This schedule lumps these

separate contributions together. Line 11 should be moved to a new subpart of line 8 to solve the problem. See Strawman Form 6I, line 13.

Substantive Issues

1. Line 5b combines voluntary and involuntary retirement contributions. If this embodies a policy decision that both kinds of deductions are reasonable expenses in every chapter, it is likely that some chapter 13 trustees and most chapter 7 trustees would strongly disagree.

12-BK-017---Dean Langdon – Concurs in the comments of Walter Oney (12-BK-012).

12-BK-019---Penny Souhrada – Heartily concurs with the comments submitted by Walter Oney (12-BK-012).

12-BK-021---Bob Weed – Agrees with Walter Oney’s comments (12-BK-012).

12-BK-023---H. Darden Hutson – Agrees with Walter Oney’s comments (12-BK-012).

12-BK-025---Stuart Gold – The form should include a line to reflect if the debtor is using savings (retirement or otherwise) to balance his or her budget. Line 8h asks for “other monthly income,” but savings or a home equity line of credit or other sources of funds would not be reflected as income. This issue comes up from time to time in overcoming hardship concerns for a reaffirmation.

12-BK-030---Jeanne Hovenden – Agrees with 99% of the comments of Walter Oney (12-BK-012) relating to forms. The instructions need to include the statement about not including a non-filing spouse if the debtor is separated from that spouse. Although the instruction is on the side of the form, it should be included above the “Part 1” line.

12-BK-038---John Gustafson – Changes on Schedule I do not appear to weigh the costs and benefits of changing the line number or letter designations for each income item. The cost is the loss of the ability to search Lexis and Westlaw by using line numbers. Changing the line numbers for budget items that have, for years, been listed using the same numbering system, will make it more difficult for practitioners to find cases relating to how to fill out the forms. There may be good reasons to numerically reorganize certain sections, but there needs to be a good and sufficient reason to move from the old numbering system. The form could easily preserve the old numbering system. Don’t make Part 1 also “number 1.” In setting up the order of “List all payroll deductions,” which would still be Line 4 if not for the extra number for Part 1, keep the first three items (payroll taxes and social security payments; insurance; union dues) in the same order, rather than moving insurance and union dues into (d) and (e) to allow “Contributions for retirement plans” and “required repayments of retirement fund loans” to be inserted as (b) and (c). There is no apparent reason for the reordering of the items on the list. Moving other income, which was previously listed in lines 7 to 13, into line 8 seems to be an arbitrary change to the numbering system for no apparent reason.

In Part 2, the form says to include the non-filing spouse “unless you are separated.” It should say “unless you are legally separated, or maintain separate households.” The instruction should be at the top of the form where people are more likely to read it.

12-BK-039---Caralyce M. Lassner – Concurs with the comments submitted by Walter Oney (12-BK-012). Rather than revising the entire Form 6I to make it easier for pro se debtors to use, the instructions could be revised. The revised form unnecessarily adds to the length of the form without adding substantive information that would justify it. The lengthening appears to be directly due to partial incorporation of the instructions into the face of the form.

The form deletes information about dependents.

Although adding lines 5b and 5c is welcome, the instructions need to be clear about what figures need to be included, depending on the chapter.

Line 5f (or any line previous to it) should be revised to identify child support, spousal support, or other domestic support obligations as specific payroll deductions. At least in Michigan, the vast majority of DSO obligations are required to be paid by wage withholding. The items in line 8c lend themselves to being restrictive rather than encompassing in nature.

To maximize accurate and full disclosure, the Instructions for Schedule I should provide additional instruction about what “income” is. Non-bankruptcy professionals do not think of their “roommate’s half” or “food stamps” as “income,” either because it is not cash or is not paid directly to them. Without such instructions, a pro se debtor may believe that he or she may be eligible for relief under chapter 7 when in fact there is sufficient income to fund a chapter 13 plan.

Line 11 is confusing and could lead to misreporting by pro se debtors. It would help to include additional instructions about what is “income” in the Instructions for Schedule I. Line 11 should be a specific line item as part of line 8, as part of “other income” information.

The language in the current Official Form, that “The column labeled ‘Spouse’ must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C . . .” should be retained. To simplify the form, change the column heading to “Debtor 2/Spouse,” because “non-filing spouse” may be confusing to a pro se debtor.

Remove all individual references to “monthly” and add a blanket title, question, or instruction at the top of the form indicating that all amounts are to be provided on a monthly basis.

12-BK-040---Bankruptcy Clerks Advisory Group – The instructions are difficult to understand and likely will create confusion for debtors, especially pro se debtors, which could result in clerk’s office staff spending more time responding to questions, reviewing forms, issuing deficiencies, and possibly scheduling hearings to address form completion problems. The instructions need to be more clear. Examples in the instructions for Schedules I and J are inconsistent. Specifically, the paragraph at the end of the first column on page 164 for Schedule I includes this example:

“For example, if you and a person to whom you are not married deposit the income from both of your jobs into a single bank account and pay all household expenses and you list all your joint household expenses on Schedule J, you must list the amounts that person contributes monthly to

pay the household expenses on line 11. . . . However, if you have listed the cost of the rent and utilities for your entire house or apartment on *Schedule J*, you must list your roommate's contribution to those expenses on *Schedule I*, line 14. Do not list line 11 contributions that you already disclosed on line 5."

This is inconsistent with the fourth paragraph of the instructions for Schedule J, which reads:

"Do not include expenses that other members of your household pay directly from their income if you do not include that income on *Schedule I*. For example, if you have a roommate and you divide the rent and utilities and you have not listed your roommate's contribution to household expenses in line 11 of *Schedule I*, you would list only your share of these expenses in *Schedule J*."

If examples in both sets of instructions are included, they should be the same.

The Committee Note to Form 6 (Schedules I and J) provides a much clearer description than the examples included in the instructions to both Schedules I and J.

12-BK-041---Daniel Press – Joins the comments of Walter Oney (12-BK-012) on the forms. Although Schedules I and J should be updated to reflect some expenses that debtors incur now that did not exist when the original schedules were adopted, such as telecommunications, there is no need for a wholesale overhaul.

12-BK-042---Joe Wittman – The amended Schedules I and J double the length of the current forms, which is unnecessary. The current form or some version of it is adequate. If the goal is to make it easier for pro se debtors to file, the effort is not worth it. There are too many variations of what "income" and "expenses" are and whether they are "routine" or intermittent, which will confuse pro se debtors. In areas where there are a lot of pro se filers or bankruptcy petition preparers, expansion of the forms is unnecessary. People trained in the law can easily put the information on the forms and deal with the unusual case.

12-BK-043---American Legal and Financial Network Executive Bankruptcy Sub-Committee on Local Rules and Rules Changes – Comments are all positive with respect to the new Schedules I and J. The forms are a vast improvement over the current forms. They provide significantly more transparency, are more intuitive, and provide greater disclosures for creditors and the court to consider in analyzing the debtor's current financial situation as it relates to a reorganization or liquidation process.

The new identification box at the top of Official Form 6I now includes the Court and District information, which is extremely helpful to creditors who typically manage a nationwide portfolio.

The format and instructions on the proposed forms are more user-friendly and should help in many cases, especially with pro se debtors.

Part 2, line 11 is a welcome addition in this age of merged and non-traditional households. It will help debtors and creditors in ascertaining the true contributions to the overall household income.

12-BK-044---Louis M. Bubala – Strongly supports the revisions to forms for individual debtors, which add clarity to the financial disclosures.

The broad reporting exclusion for employment of and income from a debtor’s non-filing, separated spouse should be removed. The exclusion is inconsistent with Nevada’s community property law, which provides generally that “separation of the parties does not dissolve the community, and does not alter the character of the parties’ income during the period of separation.” *Hybarger v. Hybarger*, 737 P.2d 889, 291 n.5 (Nev. 1987) (citations omitted). The use of the word “separated” on Schedule I may have unintended consequences in Nevada and possibly other community property states in avoiding disclosure of post-petition income. Given the state law nature of marriage and property, you should reconsider removing this reporting exception.

Applauds the additional reporting for debtors working for multiple employers. Fully supports the directive in Part 1 that a debtor attach a separate page with additional information about additional employers. This additional reporting could be added to Part 2 about monthly income. Part 2 as currently proposed requires a debtor to report only the final, combined amount of income from multiple employers. The committee should require not only the combined amounts, but also separate reporting of income for each employer, which would make the disclosure more clear.

12-BK-045---David S. Yen – The reference in the column 2 throughout the form to “Debtor 2 or non-filing spouse” is a change from the current form, which does not require the income of a non-filing spouse if the couple is separated. The new form should instruct the filer not to include income of a spouse if the couple is separated and not filing jointly.

Combining income from all jobs does not give information about how the debtor arrived at the numbers. Income from primary employers of Debtor 1 and Debtor 2 or a non-filing spouse living with Debtor 1 should be listed in detail. The form should ask only for net income from other employers. This strikes a balance between the benefit of having complete itemization and the cost of having to file longer forms. It would also make it easier to make corrections or amendments if income or deductions from one job was incorrect or changes. Because the debtor has to provide pay advices for the 60 days before the case was filed, the trustee will be able to compare the pay advices to the net income of the secondary job. The instructions should tell the debtor that paystubs from all employers will need to be provided after the case is filed.

The heading and first sentence of Part 2 should insert the word “Cash” between “Monthly” and “Income,” and in line 8f, insert the word “cash” after “Other” and before “government.” This addresses the concern about debtors being able to put a dollar value on non-cash benefits such as Medicaid, free or reduced school meals, and subsidized housing.

Line 13 eliminates the 10% threshold that currently exists in Schedule I with regard to expected changes in income within a year. Unless removing the threshold is meant as a perjury trap, it is hard to see why the 10% threshold has been removed. In our free market economy, every debtor should say that he or she expects an increase or decrease. If even a few trustees or judges take the position that answering “no” is incorrect because of the nature of the world we live in, attorneys will simply add boilerplate language that changes are expected because of the world we

live in, which will not result in obtaining any useful information. The 10% threshold should be retained.

12-BK-046---National Association of Consumer Bankruptcy Attorneys – NACBA questions the relocation of the list of dependents to Schedule J from its current place on Schedule I. The proposed forms do not fix the problem that the current forms have no place to include second job information. Line 5d should itemize the types of insurance to more closely match the categories used on the B22 forms. A separate line for contributions to Health Savings Accounts should be included, because the B22 forms allow a deduction for these contributions. More lines for “other” income should be included. Line 13 needs to include more space to provide the information (there is more space on the current form).

Carl Barnes – Best Case comments (not officially submitted) – The information about dependents should be put back on Schedule I. Putting the information in Schedule I fits the income/expense data better across the two forms, uses less space, and splits the data across pages for better reading. There is room at the bottom of page 1 to fit dependents. That would put the first three lines of wage income data to the top of page 2, which is more logical because it groups wage income information with payroll deductions and the net pay calculation.

Part 1: Describe Employment. Tighten up to fit dependents information on the page.

Line 5a. Payroll taxes and social security payments. Use of “payments” is confusing. The correct term is “contributions” (FICA is the Federal Insurance Contributions Act).

Line 5f – 5h Other deductions. Lines 5f through 5h should be changed back to a single line, as it is in the current form, to make the Schedule I data fit on one page. Additional detail could be provided in an attachment if necessary.

Line 10. Calculate monthly income. Move the total joint income to a separate line. This will make more room in the lines above by not having space reserved for a third column. It also avoids confusing references in the instructions to “last column of line 10.” All of the income data could be on a single page, making it easier to read.

Comments on Official Form 6J

12-BK-006---Ray Bell – Column B starting on page 2 asks “[w]hat your expenses will be if your current plan is confirmed.” This could be confusing, and could just replicate what is in Column A if the debtor wants to be safe. There is a long period of time between filing and the confirmation hearing, and things could change. Given that the dismissal rate for chapter 13s is high, it is not clear why this column is needed or what useful information it will provide. The second paragraph of the Instructions for Schedule J relating to Column B are also confusing.

12-BK-007---Brian Flick – The forms are too long and the information requested is redundant. For example, “Dependents in Home you are supporting, Dependents not supporting, other non-dependents.”

12-BK-012---Walter Oney –

Form Contents

1. General. The revised form is much easier to read than the current form due to the grid lines and repeating the line numbers next to the number blanks. It makes more sense to include information about dependents in this schedule than in Schedule I, because expenses but not income are typically associated with dependents.

Pro se filers will not understand the instructions for filing separate copies of the form when they are married but separated versus filing jointly. The second column will confuse pro se filers. There should be two versions of Schedule J based on whether there is one household or two. See Strawman Schedule J-1a and 2a, attached to the comment.

Eliminate the chapter 13 column.

Because people do not budget with the precision demanded by Schedule J, and because chapter 13 debtors often include arbitrary downward adjustments motivated by the need to demonstrate feasibility, the information captured in this form is not very useful. For above-median debtors, ability to pay is determined by the means test, not by Schedule J. The committee should create a separate form to capture a proposed budget of both income and expenses for chapter 11, 12, and 13 debtors, for use in the disclosure and confirmation process. Instructions for the new form would ask for forward-looking projections. The income side might include a space for anticipated contributions by other people. Exact numbers would be required for certain expense items such as rent and payments on secured debt. Rather than itemizing variable expenses, the new form would ask for an estimation. Asking debtors to total their variable expenses from Schedule J would make it more convenient to determine whether debtors are proposing to pay more or less than they were paying on the petition date.

Neither the form nor the instructions say how to treat expenses that will be paid through a chapter 12 or 13 plan. Schedule J should capture contractually required payments, even

if the plan provides for surrender of the collateral, cram down, or conduit payments. But plan feasibility requires consideration of debtor's expected cash flow, so Schedule J should not show expenses that will be paid by the trustee. The form instructions should be changed to ask for all expenses as of the filing date in the first column, and projected out-of-pocket expenses in the second column.

The instructions should be changed to require that spaces be left blank for amounts that are zero, rather than including zeroes in each blank. Including zeroes makes the form harder to read, and does not provide more accurate responses. The use of the line number next to the blank allows readers to line up the numbers with the captions.

The line items for food & housekeeping supplies and personal care services should be replaced with a single item labeled "Food and other household expenses." Eliminate the laundry & dry cleaning and personal care services entries, and instruct debtors to include those expenses as "other" expenses on line 21. Debtors generally buy groceries, household products, and personal care products at one or two stores, and separating out those expenses for the different categories is difficult. People buy linens, utensils, and minor appliances at the same time and place as items like toothpaste and paper towels. There is no place on the proposed form for these recurring expenses. Similarly, there is no place for reporting expenses for stamps, stationery, pens and pencils. It is hard for people to total up expenses that are incurred at different periods, such as clothing (twice a year), laundry (weekly), or child care (weekly or monthly). Debtors do not generally send out their laundry, and if they use dry cleaning, they do it at a self-service laundromat. A separate line item for personal care services exalts the importance of those expenses.

2. Lines 1 & 3. The word "and" is misused. The filer could literally obey the instruction on line 1 not to list "debtor 1 and debtor 2" by listing one but not both.
3. Line 4. The terms "first mortgage payments" and "other mortgage payments" could be confusing to pro se debtors if there are non-consensual liens on their primary residence. The Instructions should explain which recurring obligations are being requested.
4. Line 20. Change the caption of line 20a to parallel the caption for line 4. Add a blank for identifying any single investment property whose expenses are reported on line 20, and provide an instruction on the form to attach a separate itemization of expenses if the debtor incurs expenses for more than one other property. Add a new line 20f to capture other kinds of real estate expenses. The category "Mortgages on other property" in line 20a is incomplete, because it does not include ground rent or sublease rent. The form does not include a provision for "other" real estate expenses. The form needs to include expenses itemized by property when there are multiple investment properties.
5. Line 24. Explanatory comments that give examples inhibit responses, because people interpret them to mean that only the type of expense listed in the example should be included.

Substantive Issues

1. Including student loan payments in line 17c appears to embody a policy decision that the payments are proper deductions in all chapters. This view is not universally accepted,

and the form or instructions need to be explicit about the underlying policy of allowing debtors to be able to continue making contractually required student loan payments without being accused of unfair discrimination.

12-BK-017---Dean Langdon – Concurs in the comments of Walter Oney (12-BK-012).

12-BK-019---Penny Souhrada – Heartily concurs with the comments of Walter Oney (12-BK-012).

12-BK-020---Susan Silveira – The request to have debtors list their “future” expenses should be omitted. It would be speculative and not based in any real fact, and does not seem necessary to comply with the Bankruptcy Code. It could produce difficulty for trustees, debtors, creditors, and judges.

12-BK-021---Bob Weed – Agrees with Walter Oney’s comments (12-BK-012).

12-BK-023---H. Darden Hutson – Agrees with Walter Oney’s comments (12-BK-012).

12-BK-028---Nathan Horowitz – Does not see the usefulness of the two columns for expenses. A vast majority of debtors expect their expenses to be the same at filing as they will at confirmation in 6 months. There can be changes in financial circumstances, but those are often unexpected. Expected changes (avoiding a second lien, paying off a car loan within the year) can be included in the footnote provided on the current form. The two columns will in most cases simply be duplicated.

“Clothing” and “laundry and dry cleaning” are distinct expenses that should not be lumped together, as this makes it more difficult for a trustee to focus on a particular expense. The trustee will simply ask for a breakdown of the expenses, which will cause additional work. The same is true for lumping together child care and education. Keeping separate expenses separate allows a complete look at a debtor’s financial obligations and reduces potential inquiries.

12-BK-030---Jeanne Hovenden – Agrees with 99% of the comments of Walter Oney (12-BK-012) regarding the forms. The portion of Schedule J dealing with dependents is confusing. Asking multiple questions about dependents will lead to less clarity, not more, from debtors who are already confused by the current forms.

Column B is confusing and unnecessary. If the purpose is to put *Lanning* and *Ransom* adjustments in this form, this is not the place for them; they should be incorporated into Form 22. There are no *Lanning* adjustments to income on Schedule I, so there is no need to have adjustments to expenses on Schedule J. The Schedule J expenses will never match the standardized allowances in Form 22, so any effort to achieve that is wasted.

The description in line 5 needs to include the words “second mortgage” and “HELOC” in addition to “home equity loans.” Many debtors are fixated on these terms and will not include them unless specifically prompted.

12-BK-038---John Gustafson -- Changes on Schedule J do not appear to weigh the costs and benefits of changing the line number or letter designations for each income item. Changing the line numbers affects the ability to easily search Lexis and Westlaw for cases discussing various budget items that for years have been listed using the same numbering system. There may be good reasons to numerically reorganize certain sections, but there needs to be a good and sufficient reason to move from the old numbering system. The form could easily preserve the old numbering system.

Line 17c lists student loan payments as a deduction. This should be deleted. There is no line item for restitution payments, payments on nondischargeable debts, co-signed loans, or payments on credit cards the debtor wants to keep using. Including a line item for student loan payments makes it look like the Official Forms endorse deducting student loan payments, because after deducting all of the line items, line 22 says “The result is your monthly expenses.” That is not correct if student loans are being paid through a plan.

12-BK-039---Caralyce M. Lassner – Concurs in the comments of Walter Oney (12-BK-012). The form is expanded from one page to three with little additional information being solicited.

Part 1. Moving dependent information from Schedule I to Schedule J is logical. But line 3 asking about other household residents is misplaced if the goal is to create a more pro se debtor friendly form to assist in getting more accurate and complete disclosures. Line 8 of Schedule I, which asks for “all other income regularly received,” does not ask for disclosure of income or contributions from individuals listed in Schedule J, line 3. There should be an additional column of check boxes, potentially applicable to all individuals identified in Part 1, asking “Does this individual contribute to your household expenses?” There should be additional instructions in the Instructions to Schedule J explaining that for each individual identified on Schedule J as contributing, their contribution must be included on Schedule I.

Part 2. The use of two columns, and specifically the limitation of Column B to chapter 13 cases, is cumbersome and unnecessary. If the purpose is to show the debtor’s pre- and postpetition expenses, Column B should not be limited to chapter 13. All debtors will experience changes in their budget upon filing their petitions. Substantial changes could occur in non-priority income tax debt, residential mortgage expense (if surrendered), second mortgage expenses (lien stripping), medical and dental expenses, health insurance, and priority income tax debt. If Column B is kept in the form, it should apply to all chapters.

Line 11. This line should clarify that it refers to “uninsured” medical expenses, as the current form does.

Line 18. Revise the line to include the limitation “Do not include payments deducted from your pay.”

Line 20. Not many debtors will have second properties, so there is no reason to include this line item in all cases, thereby lengthening the form. It is more likely that a debtor will have income from the operation of rental income or a business. Schedule I already asks for a supplement if that is the case; there is no need to include the less likely line 20 item on Schedule J. These

expenses should be treated the same way disclosures regarding business and rental income are treated on the proposed Schedule I, allowing for the exception rather than the rule.

Line 24. In order to assist a pro se debtor in providing the same information currently sought on Schedule J, line 19, the example should be revised to read, “. . . expect your mortgage payment to increase or decrease because of a ‘variable rate mortgage’ or a modification to the terms of your mortgage”

12-BK-040---Bankruptcy Clerks Advisory Group – The instructions are difficult to understand and likely to create confusion for debtors, especially pro se debtors, which could result in clerk’s office staff spending more time responding to questions, reviewing forms, issuing deficiencies, and possibly scheduling hearings to address form completion problems. The instructions need to be clearer.

1. Credit Reporting Issues if Non-Filing Spouse is Identified as Debtor 2. The form requires a non-filing spouse to be identified as “Debtor 2.” Paragraph 3 of the Instructions says to include a non-filing spouse’s expenses unless the couple is separated, and requires a separate Schedule J for spouses keeping a separate household, which identifies the spouses as “Debtor 1” and “Debtor 2.” If a non-filing spouse is identified as a debtor in the schedules, credit reporting agencies might use the bankruptcy of the non-filing spouse in a credit report. Calling the non-filing spouse “Debtor 2” could lead to an assumption that the non-filing spouse is filing bankruptcy. Debtors often have problems correcting credit reports. Requiring a non-filing party to be identified as a debtor could create unforeseen credit issues. The forms should clearly delineate debtors and non-filing spouses.
2. Clarification of “Debtor 2” and “Non-Filing Spouse.” The instructions to Schedule J require a non-filing spouse to be identified as “Debtor 2,” but the box at the top of page 1 identifies “Debtor 2” as “Spouse, if filing.” There is no place on the form to clearly delineate the non-filing spouse. Remaining pages list only “Debtor 1” at the top. If the non-filing spouse must fill out this form, there is no way to identify him or her. Schedule I and Form 22 provide a Column B identified as “Debtor 2 or non-filing spouse,” which suggests that Debtor 2 is not the same as a non-filing spouse.
3. Examples in Instructions are not Consistent. See example in discussion of Schedule I.
4. Inconsistency Regarding Terms. The section labeled “Understand the terms used in this form” on Schedules I, J, Official Form 3B, and all versions of Form 22 suggest that the only time a “Debtor 2” would be identified as such would be when there is a joint case. But Schedule J requires the non-filing spouse to identify himself or herself as “Debtor 2,” which is inconsistent with the explanation for when the terms “Debtor 1” and “Debtor 2” are used.
5. Committee Note Offers Better Explanation. The Committee Note to Form 6 provides a much clearer description of different scenarios than the examples included in the instructions.
6. Schedule J – Column B. Column B could be difficult to complete, because it might be hard for debtors to estimate what expenses will change if the current plan is confirmed. It is likely that only line 21 would change. The plan can address changes, so this column is duplicitous.

7. Schedule J – Listing Dependents. Questions 1 through 3 are repetitive. They should be condensed into a single question that clearly addresses which dependents are living in each household.

12-BK-041---Daniel Press – Joins in the comments of Walter Oney (12-BK-012). Although Schedules I and J should perhaps be updated to include expenses that people incur now that did not exist when the original schedules were adopted, such as telecommunications, there is no need for a wholesale revision.

12-BK-042---Joe Wittman – The amended Schedules I and J double the length of the current forms, which is unnecessary. The current form or some version of it is adequate. If the goal is to make it easier for pro se debtors to file, the effort is not worth it. There are too many variations of what “income” and “expenses” are and whether they are “routine” or intermittent, which will confuse pro se debtors. In areas where there are a lot of pro se filers or bankruptcy petition preparers, expansion of the forms is unnecessary. People trained in the law can easily put the information on the forms and deal with the unusual case.

12-BK-043---American Legal and Financial Network Executive Bankruptcy Sub-Committee on Local Rules and Rules Changes – Comments are all positive with respect to the new Schedules I and J. The forms are a vast improvement over the current forms. They provide significantly more transparency, are more intuitive, and provide greater disclosures for creditors and the court to consider in analyzing the debtor’s current financial situation as it relates to a reorganization or liquidation process.

The new identification box at the top of Official Form 6J now includes the Court and District information, which is extremely helpful to creditors who typically manage a nationwide portfolio.

The format and instructions on the proposed forms are more user-friendly and should help in many cases, especially with pro se debtors.

12-BK-045---David S. Yen – For chapter 13 cases, any benefit of having two columns is outweighed by the extra work and confusion that would result from including two columns. It appears that the intent of Column B is that an expense for a secured debt where the trustee is paying the secured creditor should be listed as zero. Thus, if the plan provides that the trustee will make the car payment, the entry in line 17a, Column B would be zero. But this may not be clear to a pro se debtor, who may enter the car payment in Column B even though the plan provides that the trustee will be making the payment. The instructions should clarify that if an expense will be paid by the chapter 13 trustee, the amount in Column B should be zero.

The instructions should include this statement: “If some of your expenses are paid for by non-cash government assistance such as food stamps or housing subsidies, list only the cash that your household spends on the subsidized items.”

The current 10% threshold for expected changes in expenses should be retained. Many expenses change either seasonably or for some other reason, but most pro se debtors will mark the box saying that there are no expected changes.

12-BK-046---National Association of Consumer Bankruptcy Attorneys –

1. The listing of dependents includes too much white space. The more detailed wording is confusing and unnecessary.
2. The two columns in Part 2 for chapter 13 debtors are unnecessary. They would require chapter 13 debtors to complete three separate budgets (22-C plus the two columns of Schedule J). There is no Code requirement for this, and it is very burdensome on the debtors. There is no reason for the pre-bankruptcy budget. The form should include a second check box for amendments, to indicate that budget amounts are based on circumstances as of the date of any amendment to Schedule J.
3. The insurance categories should be the same as in Schedule I and Form 22.
4. Student loan payments are an appropriate expense in chapter 7 cases, as in most cases they will be nondischargeable and need to be paid. In appropriate circumstances, chapter 13 debtors should be allowed to separately classify student loan claims and continue to pay them. But because many courts and trustees object to including these payments in chapter 7 and 13 budgets, including the payments in Schedule J is a trap for the unwary. The Comments should indicate that debtors can include student loan payments under the “Other” category if appropriate.
5. Line 18 should note that a debtor should not duplicate amounts paid through payroll deduction and that show up on Schedule I.
6. Line 21 should include more lines for Other Expenses.
7. Schedule J should specifically include a line or lines for emergencies and miscellaneous, as is provided in the National Standards under food and clothing on the B22 forms.
8. The types of educational expenses should mirror the B22 line items more closely.

Carl Barnes – Best Case comments (not officially submitted) – The dependent information could be elicited using ½ vertical inch instead of the half page on the proposed form.

Part 1. Describe Your Household. Although there is some logic to moving the dependents information to Schedule J, it is better to leave it in Schedule I. That fits the income/expense data better on the two forms, using less space and making it easier to read.

The dependents could be put on the bottom of page 1 of Schedule I, which would move the wage information onto page 2 along with the payroll deductions and net pay calculation. Readers want all of the wage income and deductions on one page. Moving dependents from Schedule J would make the form 2 pages, which could be printed on a single duplexed page.

Line 1. Do you have dependents who live with you? A checkbox for “none” would be simpler than the yes/no checkboxes. Software would then print “none” in the entry.

Line 2. Do you have dependents who do not live with you? This list could be included in the Line 1 list of dependents, with a column for a “Lives with you?” yes/no checkbox. This would fit horizontally and save vertical space.

There is too much instruction text, which is repetitious and unnecessary. There is no need for the heading “Each dependent who lives in the household” to follow the Line 1 question, “Do you have dependents who live with you?” The “age” column does not need additional words besides

“age.” The yes checkbox is unnecessary; there could be a checkbox for “none.” Includes a mock-up of Lines 1 and 2 with simplified questions.

TAB 7B.3

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Official Form 3A

Instructions for the Application for Individuals to Pay the Filing Fee in Installments

United States Bankruptcy Court

12/01/13

How to Fill Out the Application

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days of when you file, and the court must approve your payment timetable. If necessary after the court establishes the initial schedule, you may ask the court to extend the deadline to 180 days after you file. In that case, you must explain why you need the extension. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee. See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 3B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer* (Official Form 19); include a copy of it in this package.

Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

Do not file these instructions with your bankruptcy filing package. Keep them for your records.

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Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

Debtor 2 _____
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
 (State)

Case number _____
 (If known)

Check if this is an amended filing

Official Form 3A

Application for Individuals to Pay the Filing Fee in Installments

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

Part 1: Specify Your Proposed Payment Timetable

1. Which chapter of the Bankruptcy Code are you choosing to file under?

- Chapter 7..... Fee: **\$306**
- Chapter 11..... Fee: **\$1,213**
- Chapter 12..... Fee: **\$246**
- Chapter 13..... Fee: **\$281**

2. You may apply to pay the filing fee in up to four installments. Fill in the amounts you propose to pay and the dates you plan to pay them. Be sure all dates are business days. Then add the payments you propose to pay.

You must propose to pay the entire fee no later than 120 days after you file this bankruptcy case. If the court approves your application, the court will set your final payment timetable.

You propose to pay...

\$ _____	<input type="checkbox"/> With the filing of the petition
	<input type="checkbox"/> On or before this date..... MM / DD / YYYY
\$ _____	On or before this date..... MM / DD / YYYY
\$ _____	On or before this date..... MM / DD / YYYY
+ \$ _____	On or before this date..... MM / DD / YYYY

Total \$ _____

◀ Your total must equal the entire fee for the chapter you checked in line 1.

Part 2: Sign Here

By signing here, you state that you are unable to pay the full filing fee at once, that you want to pay the fee in installments, and that you understand that:

- You must pay your entire filing fee before you make any more payments or transfer any more property to an attorney, bankruptcy petition preparer, or anyone else for services in connection with your bankruptcy case.
- You must pay the entire fee no later than 120 days after you first file for bankruptcy, unless the court later extends your deadline. Your debts will not be discharged until your entire fee is paid.
- If you do not make any payment when it is due, your bankruptcy case may be dismissed, and your rights in other bankruptcy proceedings may be affected.

x _____ Signature of Debtor 1	x _____ Signature of Debtor 2	x _____ Your attorney's name and signature, if you used one
Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number (if known): _____ Chapter filing under:
 Chapter 7
 Chapter 11
 Chapter 12
 Chapter 13

Order Approving Payment of Filing Fee in Installments

After considering the *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 3A), the court orders that:

- The debtor(s) may pay the filing fee in installments on the terms proposed in the application.
- The debtor(s) must pay the filing fee according to the following terms:

<u>You must pay...</u>	<u>On or before this date...</u>
\$ _____	_____ Month / day / year
\$ _____	_____ Month / day / year
\$ _____	_____ Month / day / year
+ \$ _____	_____ Month / day / year
Total	
\$ _____	

Until the filing fee is paid in full, the debtor(s) must not make any additional payment or transfer any additional property to an attorney or to anyone else for services in connection with this case.

Month / day / year

By the court: _____
United States Bankruptcy Judge

COMMITTEE NOTE

This form, which applies only in cases of individual debtors, has been revised as part of the Forms Modernization Project, making the form easier to read and, as a result, likely to generate more complete and accurate responses. Also, the declaration and signature section for a non-attorney bankruptcy petition preparer (BPP) has been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 19. That form must be completed and signed by the BPP, and filed with each document for filing prepared by a BPP.

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Official Form 3B**Instructions for the Application to Have the Chapter 7 Filing Fee Waived**

United States Bankruptcy Court

12/01/2013

How to Fill Out the Application

The fee for filing a bankruptcy case under Chapter 7 is \$306. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 3A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

For your fee to be waived, all of these statements must be true:

- You are filing for bankruptcy under Chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/PovertyGuidelines.aspx>.)
- You cannot afford to pay the fee in installments.

Your family includes you, your spouse, and any dependents listed on *Schedule J*. Your family may be different from your *household*, referenced on *Schedules I* and *J*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer* (Official Form 19); include a copy of it in this package.

Do not file these instructions with your bankruptcy filing package. Keep them for your records.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A: Real Property* (Official Form 6A)
- *Schedule I: Your Income* (Official Form 6I)
- *Schedule J: Your Expenses* (Official Form J)

Understand the terms used in this form

The *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 3B) uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. For example, if the form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Things to remember when filling out this form

- Be as complete and accurate as possible.
- If you have some additional circumstances that cause you to not be able to pay your filing fee in installments, explain them on line 5 of the form.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

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Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Check if this is an amended filing

Official Form 3B

Application to Have the Chapter 7 Filing Fee Waived

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

Part 1: Tell the Court About Your Family and Your Family's Income

1. What is the size of your family?

Your family includes you, your spouse, and any dependents listed on *Schedule J: Current Expenditures of Individual Debtor(s)* (Official Form 6J).

Check all that apply:

- You
- Your spouse
- Your dependents _____

How many dependents?

Total number of people

2. Fill in your family's average monthly income.

Include your spouse's income if your spouse is living with you, even if your spouse is not filing.

Do not include your spouse's income if you are separated and your spouse is not filing with you.

Add your income and your spouse's income. Include the value (if known) of any non-cash governmental assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies.

If you have already filled out *Schedule I: Your Income*, see line 10.

That person's average monthly net income (take-home pay)

You \$ _____

Your spouse + \$ _____

Subtotal..... \$ _____

Subtract any non-cash governmental assistance that you included above.

— \$ _____

Your family's average monthly net income

Total..... \$ _____

3. Do you receive non-cash governmental assistance?

- No
- Yes. Describe.....

Type of assistance

4. Do you expect your family's average monthly net income to increase or decrease by more than 10% during the next 6 months?

- No
- Yes. Explain.....

5. Tell the court why you are unable to pay the filing fee in installments within 120 days. If you have some additional circumstances that cause you to not be able to pay your filing fee in installments, explain them.

Part 2: Tell the Court About Your Monthly Expenses

6. Estimate your average monthly expenses.

Include amounts paid by any government assistance that you reported on line 2. \$ _____

If you have already filled out *Schedule J, Your Expenses*, copy line 22 from that form.

7. Do these expenses cover anyone who is not included in your family as reported in line 1?

- No
 Yes. Identify who.....

8. Does anyone other than you regularly pay any of these expenses?

- No
 Yes. How much do you regularly receive as contributions? \$ _____ monthly

If you have already filled out *Schedule I: Your Income*, copy the total from line 11.

9. Do you expect your average monthly expenses to increase or decrease by more than 10% during the next 6 months?

- No
 Yes. Explain

Part 3: Tell the Court About Your Property

If you have already filled out *Schedule A: Real Property (Official Form 6A)* and *Schedule B: Personal Property (Official Form 6B)*, attach copies to this application and go to Part 4.

10. How much cash do you have?

Examples: Money you have in your wallet, in your home, and on hand when you file this application

Cash: \$ _____

11. Bank accounts and other deposits of money?

Examples: Checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, and other similar institutions. If you have more than one account with the same institution, list each. Do not include 401(k) and IRA accounts.

	<u>Institution name:</u>	<u>Amount:</u>
Checking account:	_____	\$ _____
Savings account:	_____	\$ _____
Other financial accounts:	_____	\$ _____
Other financial accounts:	_____	\$ _____

12. Your home? (if you own it outright or are purchasing it)

Examples: House, condominium, manufactured home, or mobile home

Number	Street	Current value:	\$ _____
City	State	ZIP Code	Amount you owe on mortgage and liens: \$ _____

13. Other real estate?

Number	Street	Current value:	\$ _____
City	State	ZIP Code	Amount you owe on mortgage and liens: \$ _____

14. The vehicles you own?

Examples: Cars, vans, trucks, sports utility vehicles, motorcycles, tractors, boats

Make:	_____	Current value:	\$ _____
Model:	_____	Amount you owe on liens:	\$ _____
Year:	_____		
Mileage:	_____		
Make:	_____	Current value:	\$ _____
Model:	_____	Amount you owe on liens:	\$ _____
Year:	_____		
Mileage:	_____		

15. Other assets? Describe the other assets: Current value: \$ _____
 Do not include household items and clothing. Amount you owe on liens: \$ _____

16. Money or property due you? Who owes you the money or property? How much is owed? Do you believe you will likely receive payment in the next 180 days?

Examples: Tax refunds, past due or lump sum alimony, spousal support, child support, maintenance, divorce or property settlements, Social Security benefits, Workers' compensation, personal injury recovery

_____ \$ _____ No
 _____ \$ _____ Yes. Explain:

Part 4: Answer These Additional Questions

17. Have you paid anyone for services for this case, including filling out this application, the bankruptcy filing package, or the schedules?

No **How much did you pay?**
 Yes. **Whom did you pay?** Check all that apply: _____ \$ _____

An attorney
 A bankruptcy petition preparer, paralegal, or typing service
 Someone else _____

18. Have you promised to pay or do you expect to pay someone for services for your bankruptcy case?

No **How much do you expect to pay?**
 Yes. **Whom do you expect to pay?** Check all that apply: _____ \$ _____

An attorney
 A bankruptcy petition preparer, paralegal, or typing service
 Someone else _____

19. Has anyone paid someone on your behalf for services for this case?

No **How much did someone else pay?**
 Yes. **Who was paid on your behalf?** Check all that apply: _____ \$ _____

An attorney **Who paid?** Check all that apply:
 A bankruptcy petition preparer, paralegal, or typing service Parent
 Someone else _____ Brother or sister
 Friend
 Pastor or clergy
 Someone else _____

20. Have you filed for bankruptcy within the last 8 years?

No
 Yes. District _____ When _____ Case number _____
MM/ DD/ YYYY

District _____ When _____ Case number _____
MM/ DD/ YYYY

District _____ When _____ Case number _____
MM/ DD/ YYYY

Part 5: Sign Here

By signing here under penalty of perjury, I declare that I cannot afford to pay the filing fee either in full or in installments. I also declare that the information I provided in this application is true and correct.

X _____ **X** _____
 Signature of Debtor 1 Signature of Debtor 2

Date _____ Date _____
 MM / DD / YYYY MM / DD / YYYY

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(if known)

Order on the Application to Have the Chapter 7 Filing Fee Waived

After considering the debtor's *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 3B), the court orders that the application is:

- Granted.** However, the court may order the debtor to pay the fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted.
- Denied.** The debtor must pay the \$306 filing fee according to the following terms:

<u>You must pay...</u>	<u>On or before this date...</u>
\$ _____.	_____/_____/_____ Month / day / year
\$ _____.	_____/_____/_____ Month / day / year
\$ _____.	_____/_____/_____ Month / day / year
+ \$ _____.	_____/_____/_____ Month / day / year
Total	\$ 306.00

If the debtor would like to propose a different payment timetable, the debtor must file a motion promptly with a payment proposal. The debtor may use *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 3A) for this purpose. The court will consider it.

The debtor must pay the entire filing fee before making any more payments or transferring any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with the bankruptcy case. The debtor must also pay the entire filing fee to receive a discharge. If the debtor does not make any payment when it is due, the bankruptcy case may be dismissed and the debtor's rights in future bankruptcy cases may be affected.

Scheduled for hearing.

A hearing to consider the debtor's application will be held

on _____ at _____:_____ AM / PM at _____.
Month / day / year Address of courthouse

If the debtor does not appear at this hearing, the court may deny the application.

Month / day / year

By the court: _____
 United States Bankruptcy Judge

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COMMITTEE NOTE

This form, which applies only in cases of individual debtors, has been revised as part of the Forms Modernization Project, making the form easier to read and, as a result, likely to generate more complete and accurate responses. Additionally, in calculating the income that determines the debtor's initial eligibility for a fee waiver, line 2 of the form now directs the debtor to exclude non-cash governmental assistance, such as food stamps and housing subsidies. However, because non-cash governmental assistance may be relevant in evaluating the additional requirement that the debtor be unable to pay the filing fee, the nature of any such assistance is to be reported separately on line 3. Also, the declaration and signature section for a non-attorney bankruptcy petition preparer (BPP) has been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 19. That form must be completed and signed by the BPP, and filed with each document for filing prepared by a BPP.

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Official Form 6I**Instructions for Schedule I: Your Income**

United States Bankruptcy Court

12/01/13

How to fill out Schedule I

In *Schedule I: Your Income* (Official Form 6I), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

How to report employment and income

If you have nothing to report for a line, write \$0.

In Part 1, line 1, fill in employment information for you and, if appropriate, for a non-filing spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if income is not received in monthly payments.

If your income is received in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much income would be by month, as described below.

If either you or a non-filing spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

One easy way to calculate how much income per month is to total the payments earned in a year, then divide by 12 to get a monthly figure. For example, if you are paid seasonally, you would simply divide the amount you expect to earn in a year by 12 to get the monthly amount.

Below are other examples of how to calculate monthly amount.

Example for quarterly payments:

If you are paid \$15,000 every quarter, figure your monthly income in this way:

$$\begin{array}{r} \$15,000 \text{ income every quarter} \\ \times \quad 4 \text{ pay periods in the year} \\ \hline \$60,000 \text{ total income for the year} \end{array}$$

$$\frac{\$60,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,000 \text{ monthly income}$$

Example for bi-weekly payments:

If you are paid \$2,500 every other week, figure your monthly income in this way:

$$\begin{array}{r} \$2,500 \text{ income every other week} \\ \times \quad 26 \text{ number of pay periods in the year} \\ \hline \$65,000 \text{ total income for the year} \end{array}$$

$$\frac{\$65,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,417 \text{ monthly income}$$

Example for weekly payment:

If you are paid \$1,000 every week, figure your monthly income in this way:

$$\begin{array}{r} \$1,000 \text{ income every week} \\ \times \quad 52 \text{ number of pay periods in the year} \\ \hline \$52,000 \text{ total income for the year} \end{array}$$

$$\frac{\$52,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$4,333 \text{ monthly income}$$

Example for irregular payments:

If you are paid \$4,000 8 times a year, figure your monthly income in this way:

$$\begin{array}{r} \$4,000 \text{ income a payment} \\ \times \quad 8 \text{ payments a year} \\ \hline \$32,000 \text{ income for the year} \end{array}$$

$$\frac{\$32,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$2,667 \text{ monthly income}$$

Example for daily payments:

If you are paid \$75 a day and you work about 8 days a month, figure your monthly income in this way:

$$\begin{array}{r} \$75 \text{ income a day} \\ \times \quad 96 \text{ days a year} \\ \hline \$7,200 \text{ total income for the year} \end{array}$$

$$\frac{\$7,200 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$600 \text{ monthly income}$$

or this way:

$$\begin{array}{r} \$75 \text{ income a day} \\ \times \quad 8 \text{ payments a month} \\ \hline \$600 \text{ income for the month} \end{array}$$

In Part 2, line 11, fill in amounts that other people provide to pay the expenses you list on *Schedule J: Your Expenses*. For example, if you and a person to whom you are not married pay all household expenses together and you list all your joint household expenses on *Schedule J*, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on *Schedule J*. Do not list on line 11 contributions that you already disclosed elsewhere on the form.

Note that the income you report on *Schedule I* may be different from the income you report on other bankruptcy forms. For example, the *Statement of Current Monthly Income and Means Test Calculation (Chapter 7)* (Official Form 22A), *Statement of Current Monthly Income (Chapter 11)* (Official Form 22B), and the *Statement of Current Monthly Income and Calculation of Commitment Period (Chapter 13)* (Official Form 22C) all use a different definition of income and apply that definition to a different period of time. *Schedule I* asks about the income that you are now receiving, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

If, after filing *Schedule I*, you need to file an estimate of income in a chapter 13 case for a date after your bankruptcy, you may complete a supplemental *Schedule I*. To do so you must check the “supplement” box at the top of the form and fill in the date.

Understand the terms used in this form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

Do not file these instructions with your bankruptcy filing package. Keep them for your records.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Check if this is:

An amended filing

A supplement showing post-petition chapter 13 income as of the following date:

MM / DD / YYYY

Official Form 6I
Schedule I: Your Income

12/13

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married, not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. Fill in your employment information.

If you have more than one job, attach a separate page with information about additional employers.

Include part-time, seasonal, or self-employed work.

Occupation may include student or homemaker, if it applies.

Employment status

Employed
 Not employed

Employed
 Not employed

Occupation

Employer's name

Employer's address

Number _____ Street _____	Number _____ Street _____
_____	_____
_____	_____
City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____

How long employed there? _____

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

	For Debtor 1	For Debtor 2 or non-filing spouse
2. List monthly gross wages, salary, and commissions (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2. \$ _____	\$ _____
3. Estimate and list monthly overtime pay.	3. + \$ _____	+ \$ _____
4. Calculate gross income. Add line 2 + line 3.	4. \$ _____	\$ _____

	For Debtor 1	For Debtor 2 or non-filing spouse
Copy line 4 here..... → 4.	\$ _____	\$ _____
5. List all payroll deductions:		
5a. Tax, Medicare, and Social Security deductions	5a. \$ _____	\$ _____
5b. Mandatory contributions for retirement plans	5b. \$ _____	\$ _____
5c. Voluntary contributions for retirement plans	5c. \$ _____	\$ _____
5d. Required repayments of retirement fund loans	5d. \$ _____	\$ _____
5e. Insurance	5e. \$ _____	\$ _____
5f. Domestic support obligations	5f. \$ _____	\$ _____
5g. Union dues	5g. \$ _____	\$ _____
5h. Other deductions. Specify: _____	5h. + \$ _____	+ \$ _____
6. Add the payroll deductions. Add lines 5a + 5b + 5c + 5d + 5e + 5f + 5g + 5h.	6. \$ _____	\$ _____
7. Calculate total monthly take-home pay. Subtract line 6 from line 4.	7. \$ _____	\$ _____
8. List all other income regularly received:		
8a. Net income from rental property and from operating a business, profession, or farm Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a. \$ _____	\$ _____
8b. Interest and dividends	8b. \$ _____	\$ _____
8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c. \$ _____	\$ _____
8d. Unemployment compensation	8d. \$ _____	\$ _____
8e. Social Security	8e. \$ _____	\$ _____
8f. Other government assistance that you regularly receive Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f. \$ _____	\$ _____
8g. Pension or retirement income	8g. \$ _____	\$ _____
8h. Other monthly income. Specify: _____	8h. + \$ _____	+ \$ _____
9. Add all other income. Add lines 8a + 8b + 8c + 8d + 8e + 8f + 8g + 8h.	9. \$ _____	\$ _____
10. Calculate monthly income. Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10. \$ _____ +	\$ _____ = \$ _____
11. State all other regular contributions to the expenses that you list in Schedule J. Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J. Specify: _____		11. + \$ _____
12. Add the amount in the last column of line 10 to the amount in line 11. The result is the combined monthly income. Write that amount on the Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data, if it applies		12. \$ _____ Combined monthly income
13. Do you expect an increase or decrease within the year after you file this form? <input type="checkbox"/> No. <input type="checkbox"/> Yes. Explain: _____		

Official Form 6J**Instructions for Schedule J: Your Expenses**

United States Bankruptcy Court

12/01/13

How to Fill Out Schedule J

Schedule J: Your Expenses (Official Form 6J) provides an estimate the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household whose income is included on *Schedule I: Your Income* (Official Form 6I). On your initial filing in Part 2 select “Initial estimate at the beginning of the case”.

If you are married and are filing individually, include your non-filing spouse’s expenses unless you are separated.

If you are filing jointly and Debtor 1 and Debtor 2 keep separate households, fill out a separate *Schedule J* for each debtor. Check the box at the top of page 1 of the form for Debtor 2 to show that a separate form is being filed.

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule I*. For example, if you have a roommate and you divide the rent and utilities and you have not listed your roommate’s contribution to household expenses in line 11 of *Schedule I*, you would list only your share of these expenses on *Schedule J*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments, calculate how much you would spend on those items every month.

Do not list as expenses any payments on credit card debts incurred before filing bankruptcy.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule I*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business

property as part of the process of determining your net income from that property on *Schedule I* (line 8a).

If you have nothing to report for a line, write \$0.

If, after filing *Schedule J*, you need to file an estimate of expenses in a chapter 13 case for a date after your bankruptcy, you may complete a supplemental *Schedule J*. To do so you must check the “supplement” box at the top of the form and fill in the date.

Understand the terms used in this form

This form uses *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, this form uses *you* to ask for information from both debtors. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.
- Do not list a minor child’s full name. Instead, fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m) and 9037.

Do not file these instructions with your bankruptcy filing package. Keep them for your records.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Check if this is:

- An amended filing
- A supplement showing post-petition chapter 13 expenses as of the following date:
MM / DD / YYYY
- A separate filing for Debtor 2 because Debtor 2 maintains a separate household

Official Form 6J

Schedule J: Your Expenses

12/13

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. Is this a joint case?

- No. Go to line 2.
- Yes. Does Debtor 2 live in a separate household?
 - No
 - Yes. Debtor 2 must file a separate Schedule J.

2. Do you have dependents?

Do not list Debtor 1 and Debtor 2.
 Do not state the dependents' names.

- No
- Yes. Fill out this information for each dependent.....

Dependent's relationship to Debtor 1 or Debtor 2

Dependent's age

Does dependent live with you?

Dependent's relationship to Debtor 1 or Debtor 2	Dependent's age	Does dependent live with you?
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes

3. Do your expenses include expenses of people other than yourself and your dependents?

- No
- Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as your bankruptcy filing date unless you are using this form as supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental Schedule J, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on Schedule I: Your Income (Official Form 6I.)

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

Your expenses

4. \$ _____

If not included in line 4:

- 4a. Real estate taxes 4a. \$ _____
- 4b. Property, homeowner's, or renter's insurance 4b. \$ _____
- 4c. Home maintenance, repair, and upkeep expenses 4c. \$ _____
- 4d. Homeowner's association or condominium dues 4d. \$ _____

Your expenses

5. **Additional mortgage payments for your residence**, such as home equity loans

5. \$ _____

6. **Utilities:**

6a. Electricity, heat, natural gas

6a. \$ _____

6b. Water, sewer, garbage collection

6b. \$ _____

6c. Telephone, cell phone, Internet, satellite, and cable services

6c. \$ _____

6d. Other. Specify: _____

6d. \$ _____

7. **Food and housekeeping supplies**

7. \$ _____

8. **Childcare and children's education costs**

8. \$ _____

9. **Clothing, laundry, and dry cleaning**

9. \$ _____

10. **Personal care products and services**

10. \$ _____

11. **Medical and dental expenses**

11. \$ _____

12. **Transportation.** Include gas, maintenance, bus or train fare.

Do not include car payments.

12. \$ _____

13. **Entertainment, clubs, recreation, newspapers, magazine, and books**

13. \$ _____

14. **Charitable contributions and religious donations**

14. \$ _____

15. **Insurance.**

Do not include insurance deducted from your pay or included in lines 4 or 20.

15a. Life insurance

15a. \$ _____

15b. Health insurance

15b. \$ _____

15c. Vehicle insurance

15c. \$ _____

15d. Other insurance. Specify: _____

15d. \$ _____

16. **Taxes.** Do not include taxes deducted from your pay or included in lines 4 or 20.

Specify: _____

16. \$ _____

17. **Installment or lease payments:**

17a. Car payments for Vehicle 1

17a. \$ _____

17b. Car payments for Vehicle 2

17b. \$ _____

17c. Other. Specify: _____

17c. \$ _____

17d. Other. Specify: _____

17d. \$ _____

18. **Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 6I).**

18. \$ _____

19. **Other payments you make to support others who do not live with you.**

Specify: _____

\$ _____

19.

20. **Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.**

20a. Mortgages on other property

20a. \$ _____

20b. Real estate taxes

20b. \$ _____

20c. Property, homeowner's, or renter's insurance

20c. \$ _____

20d. Maintenance, repair, and upkeep expenses

20d. \$ _____

20e. Homeowner's association or condominium dues

20e. \$ _____

21. Other. Specify: _____

21. +\$ _____

22. Your monthly expenses. Add lines 4 through 21.
The result is your monthly expenses.

22. \$ _____

23. Calculate your monthly net income.

23a. Copy line 12 (your combined monthly income) from Schedule I.

23a. \$ _____

23b. Copy your monthly expenses from line 22 above.

23b. -\$ _____

23c. Subtract your monthly expenses from your monthly income.
The result is your monthly net income.

23c. \$ _____

24. Do you expect an increase or decrease in your expenses within the year after you file this form?

For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

No.

Yes.

Explain here:

Empty text box for explanation.

COMMITTEE NOTE

Schedule I: Your Income (Official Form 6I) and *Schedule J: Your Expenses* (Official Form 6J), which apply only in cases of individual debtors, have been revised as part of the Forms Modernization Project, making the forms easier to read and, as a result, likely to generate more complete and accurate responses.

Revised Schedules I and J seek to obtain a full picture of debtor's economic situation—to the extent that debtor receives income or has expenses. The revised forms are intended to avoid the situation that frequently happens with the current forms where debtor lives with and pools assets with other people and the household provides support to dependents who may not be related by blood or marriage to debtor.

The amendments seek to avoid the situation where the expenses listed on Schedule J are for the entire household, but the income listed on Schedule I is only for the debtor. Line 11 on revised Schedule I, now includes contributions made by someone else to the expenses on Schedule J and the debtor is instructed to include contributions from an unmarried partner, members of the debtor's household, dependents, roommates, and other friends or relatives.

As revised, the initial Schedule J will provide estimated expenses at the beginning of the case and the debtor will so indicate in Part 2 of the form. .

In drafting the form it became apparent that at least some courts are using Schedules I and J in analyzing proposed chapter 13 plans and potential modification of those plans or when a debtor's financial circumstances change. To avoid a lack of clarity on the form regarding the date to be used in computing expenses, and in order to allow Schedule J to continue to serve the plan feasibility function, the revised form may also be used as a supplement to the initial filing if the debtor checks the appropriate box in the caption and indicates the pertinent post-filing date of the estimate.

New lines 1, 2, and 3 on revised Schedule J request information on the debtor's household. Line 1 determines whether the filing is by separated married debtors and directs each debtor to file a separate Schedule J: Your Expenses. A check box has been added to the caption to identify such filings. Line 2 identifies

dependents who live with the debtor, dependents who live separately, and other members of the household. In order to allow a full understanding of the debtor's expenses, Line 3 identifies those debtors whose expenses include expenses for people other than the debtors and their dependents. In addition, new line 23 on the form includes a calculation of the debtor's monthly net income.

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MEMORANDUM

To: Advisory Committee on Bankruptcy Rules

From: Forms Modernization Project

Re: Recommendation re Means Test Forms (22A-1, 22A-2, 22B, 22C-1, 22C-2); Legal Issues to be Resolved

Date: March 17, 2013

The comments on the published proposed revisions of the means test forms have led the Forms Modernization Project to conclude that some substantial revisions in the forms—beyond improvements in formatting and language—should be proposed. The principal revisions proposed are the following:

(1) making the numbering in all of the forms uniform, so that the same line number will apply to a given income inclusion or expense deduction in each form;

(2) creating a new form for the exclusions from means-testing in Chapter 7 cases based on the debtor not having primarily consumer debts, being a disabled veteran, or being an excluded member of the National Guard or homeland defense employee;

(3) adding a direction that in any case where the income of both spouses is set out, there should not be a separate income item for the payment of a domestic support obligation from one spouse to the other; and

Several non-substantive suggested changes are reflected in a memorandum summarizing the comments, which accompanies this memo. Several of these changes, indicated by asterisks, are also recommended for implementation.

If the Advisory Committee is able to pass on the recommended changes at its April meeting, a revised set of means test forms could be prepared promptly after the meeting and circulated by email for approval by the Committee. If approved, forms could be submitted to the Standing Committee at its meeting in June with a request that they be republished for comment.

However, in addition to the changes that the Forms Modernization Group recommends, comments on the means test forms included several proposals involving disputed legal questions. In order for revised versions of the forms to be prepared, it would be helpful for the Advisory Committee to resolve six of these legal questions.

Legal questions to be resolved

1. Should the means test forms continue to reject the holding in *Drummand v. Wiegand (In re Wiegand)*, 386 B.R. 238 (9th Cir. BAP 2008), that gross business and rental receipts are to be counted as "current monthly income" under § 101(10A)?

This question has come before the Advisory Committee several times in the past, most recently in 2008, when it was addressed in a memorandum by Elizabeth Gibson. The basis for the *Wiegand* holding is § 1325(b)(2)(B), which directs that in calculating disposable income for purposes of Chapter 13, the current monthly income of a debtor engaged in business should be reduced by "expenditures necessary for the continuation, preservation, and operation of such business." From this, the decision reasons that gross receipts must be included in current monthly income; otherwise, the deduction of business operation expenses would not be reasonable.

As set out in the 2008 memo, there are several problems with this result.

First, the 2005 BAPCPA amendments, which introduced and defined the term "current monthly income," did not change § 1325(b)(2)(B), whose language previously simply limited the debtor's "income." There is no apparent reason to believe that Congress gave consideration of the effect of using § 1325(b)(2)(B) to imply that the new term "current monthly income" includes gross business receipts.

Second, if "current monthly income" does include gross receipts, the means test of Chapter 7 is made unreasonable, because there is no provision of § 707(b)(2), which creates and defines the means test, allowing the deduction of business expenses. Thus, any debtor operating a business would likely be presumed to be abusing the provisions of Chapter 7, and could rebut the presumption by demonstrating that the ordinary expenses of operating the business were, as set out in § 707(b)(2)(B)(i), "special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces."

Third, including gross receipts in "current monthly income" creates unreasonable distinctions between similarly situated debtors, giving a sole proprietor current monthly income based on the business's gross receipts, while giving the sole owner of an LLC or Chapter S corporation only the net profits of the business.

Finally, the Census Bureau's median state income, to which the debtor's current monthly income is compared, itself includes only net business income.

Since *Wiegand* was decided, three courts other than the Ninth Circuit BAP have adopted its holding. See *In re Bembenek*, 08-22607-SVK, 2008 WL 2704289 (Bankr. E.D. Wis. July 2, 2008); *In re Sharp*, 394 B.R. 207 (Bankr. C.D. Ill. 2008); *In re*

Compann, 459 B.R. 478 (Bankr. N.D. Ga. 2010). Two courts have rejected *Wiegand* in favor of the approach of the means test forms. See *In re Roman*, 11-01415 BR, 2011 WL 5593143 (Bankr. D.P.R. Nov. 16, 2011); *In re Romero*, 12-20793-BKC-AJC, 2013 WL 241742 (Bankr. S.D. Fla. Jan 22, 2013).

If the forms were changed to incorporate the *Wiegand* approach, gross receipts would be listed in the debtors' initial statement of income, and consideration would have to be given as to whether a deduction for business expenses could be allowed in Chapter 7 cases.

2. Should the forms continue to allow debtors the choice of not including unemployment compensation as current monthly income, on the theory that it is a benefit under the Social Security Act, and so excluded by the definition in § 101(10A)?

The legal issue here is explained in the 2005-2008 Committee Note to the means test forms:

Unemployment compensation is given special treatment. Because the federal government provides funding for state unemployment compensation under the Social Security Act, there may be a dispute about whether unemployment compensation is a "benefit received under the Social Security Act." The forms take no position on the merits of this argument, but give debtors the option of reporting unemployment compensation separately from the CMI calculation. This separate reporting allows parties in interest to determine the materiality of an exclusion of unemployment compensation and to challenge it.

The argument for treating unemployment compensation as current monthly income is straightforward: Unemployed debtors receive no benefits "under the Social Security Act," but only under programs adopted by their states, which may provide benefits beyond those that are federally funded. See *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 775 n.3 (1981) ("All 50 States have employment security laws implementing the federal mandatory minimum standards of coverage. A State, of course, is free to expand its coverage beyond the federal minimum without jeopardizing its federal certification.")

After the means test forms became effective, two decisions held that unemployment compensation was not current monthly income. See *In re Munger*, 370 B.R. 21 (Bankr. D. Mass. 2007); *In re Sorrell*, 359 B.R. 167 (Bankr. S.D. Oh. 2007). Since 2007, however, each of the nine decisions to consider the question has reached the contrary conclusion. See *In re Gentry*, 463 B.R. 526 (Bankr. D. Colo. 2011); *In re Vandyne*, 09-65200, 2011 WL 3664551 (Bankr. N.D. Oh. Aug. 19, 2011); *In re Overby*, 10-20602-DRD13, 2010 WL 3834647 (Bankr. W.D. Mo. Sept. 24, 2010); *In re Washington*, 438 B.R. 348 (M.D. Ala. 2010); *In re Winkles*, No. 10-30137, 2010

WL 2680895 (Bankr. S.D. Ill. July 6, 2010); *In re Nance*, No. 09-05604-JKC-13, 2010 WL 2079653 (Bankr. S.D. Ind. May 21, 2010); *In re Rose*, 09-70088-PWB, 2010 WL 2600591 (Bankr. N.D. Ga. May 12, 2010); *In re Kucharz*, 418 B.R. 635 (Bankr. C.D. Ill. 2009); *In re Baden*, 396 B.R. 617 (Bankr. M.D. Pa. 2008).

3. Should the forms introduce a deduction for vehicles that are more than six years old or have been drive more than 75,000 miles?

The EOUST has taken the position that “Debtors located outside of the Fifth, Seventh, and Eighth Circuits who operate vehicles not subject to a loan or lease may deduct an additional \$200 if the vehicle is owned by the debtor, and is older than six (6) model years or has more than 75,000 miles.” Statement of the U.S. Trustee Program’s Position on Legal Issues Arising under the Chapter 13 Disposable Income Test (April 20,2010 rev) at 5, available at www.justice.gov/ust/eo/bapcpa/docs/chapter13_analysis.pdf. The EOUST adds this allowance to the Local Standard transportation, vehicle operation expense.

The difficulty with this allowance is that it appears to be unauthorized by the statute. A deduction for vehicles is allowed by § 707(b)(2)A(ii)(I) as part of the “monthly expense amounts specified under the [IRS] Local Standards.” The deduction for older vehicles is not part of the Local Standards, but appears to be an additional deduction allowed by § 5.8.5.20.3 of the Internal Revenue Manual. Thus, several decisions have held that it is not a proper means test deduction. *See, e.g., In re Hargis*, 451 B.R. 174, 178 (Bankr. D. Utah 2011), *In re VanDyke*, 450 B.R. 836, 841 (Bankr. C.D. Ill. 2011).

4. Should Official Forms 22C-1 and 22C-2 introduce an adjustment for changes in income, pursuant to the *Lanning* decision, for determining the applicable commitment period under § 1325(b)(4)?

Section 1325(b)(4) provides for an applicable commitment period of five years if a debtor’s current monthly income—defined by § 101(10A) to be based on a six-month prepetition average—is not less than the applicable state median income. If the current monthly income is less than that median, the applicable commitment period is three years. *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), allows changes in a debtor’s income or expenses to change the debtor’s projected disposable income under § 1325(b)(1). At least one decision has accepted the argument that a change in the debtor’s income from the calculation of current monthly income should similarly allow a change in the applicable commitment period. *In re Ducret*, 2011 WL 2621329 (Bankr. S.D. Fla. 2011). However, this decision was reversed on appeal, in a decision finding that the definition of § 101(10A) is controlling, and that the decision *Lanning* is inapposite. *In re Ducret*, 2012 WL 4468376 at *4 (S.D. Fla. 2012):

The Supreme Court in *Hamilton* placed great weight on the qualifying word “projected” as it related to disposable income. That qualifier is not present relative to “applicable commitment period.” The Court in

Hamilton also emphasized the lack of simple multiplication to determine “projected disposable income,” whereas simple multiplication is mandated for the determination of “current monthly income,” 11 U.S.C. § 101(10A), and “applicable commitment period,” 11 U.S.C. 1325(b)(4). The Court in *Hamilton* also emphasized that “projected disposable income” was to be determined as of the “effective date of the plan,” and contrasted that mandate from those which Congress requires to be valued “as of the filing.” “Current monthly income,” the key variable in determining the “applicable commitment period,” is mandated to be calculated as of the filing date of the petition. 11 U.S.C. § 101(10A).

5. Should Official Form 22C-2 continue to require reporting of only of those *Lanning* changes in income and expenses that occur less than one year after the bankruptcy filing?

Nothing in the *Lanning* decision imposes a one-year limit on postpetition changes in income or expenses for purposes of determining projected disposable income under § 1325(b)(1)(B). The decision simply holds that “when a bankruptcy court calculates a debtor’s projected disposable income, the court may account for changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation.” *Hamilton v. Lanning*, 130 S. Ct. 2464, 2478 (2010). The Consumer and Forms Subcommittees originally proposed that the form require the reporting of any virtually certain changes in income and expenses that would occur during the applicable commitment period, but at its Fall 2010 meeting, the Advisory Committee determined to use a one-year limit on the reporting. Three reasons were advanced for the change: first, because the certainty of change will decrease with the passage of time; second, because the effect of the change on projected disposable income is lessened with the passage of time; and third, because the reporting of changes places a cost on the debtor that may not be appropriate when compared to the benefit.

6. Should Official Forms 22A-2 and 22C-2 allow use of the *Johnson v. Zimmer* formula for determining the number of persons used in determining National and Local IRS expense allowances?

The IRS National and Local Standards grant a taxpayer a variable amount for several expense allowances, depending on the number of persons associated with the debtor. The IRS Collection Financial Standards, which set out these allowances, state the following rule regarding the number of persons:

[T]he total number of persons allowed for national standard expenses should be the same as those allowed as exemptions on the taxpayer's current year income tax return. . . . There may be reasonable exceptions. Fully document the reasons for any exceptions. For example, foster children or children for whom adoption is pending.

IRS Manual § 5.15.1.7, ¶6 (10-02-2012). The current means test forms, as reflected in the 2010 Committee Note, reflect this rule. See, e.g., Official Form B22C, Line 24, providing that the number of persons for the non-health care National Standard allowance should be “the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.” The proposed revisions to the forms retain this direction.

Johnson v. Zimmer, 686 F.3d 224 (4th Cir. 2012), uses a different, fractional economic unit approach, affirming a bankruptcy court decision that it described as follows:

The bankruptcy court adopted a variation of the “economic unit” approach, first assessing the number of individuals whose income and expenses are intermingled with the Debtor's, and then calculating how much time any part-time residents were members of the Debtor's household. . . .

In deciding that part-time residents should count as part-time members of the Debtor's “household,” the bankruptcy court acknowledged that “[d]ividing children into fractions is not ideal,” but concluded that this additional step in applying the economic unit approach best “capture[d] the nuances of familial support and bonds” and enabled the court to “account for dependents who reside with the debtor on a part-time basis ... in calculating variable costs such as food, utilities, and out-of-pocket health care expenses.”

Id. at 227. There is a dissenting opinion, which states, “The bankruptcy court's approach embraces the startling conclusion that the meaning of the terms ‘individuals’ and ‘dependents’ in these provisions can encompass fractional human beings.” *Id.* at 243 (Wilkinson, J., dissenting). A petition for certiorari was denied on January 7, 2013. There have not been any reported decisions to date adopting the *Johnson* approach to determining the number of persons for application of the IRS Standards.

If *Johnson* were incorporated into the means test forms, substantial revisions would be required.

TAB 7C.2

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MEMORANDUM

To: Advisory Committee on Bankruptcy Rules

From: Forms Modernization Project

Re: Initial Publication of Modernized Forms
Comments on Means Test Forms (22A-1, 22A-2, 22B, 22C-1,
22C-2)

Date: March 17, 2013

A number of comments have been received on the published means test forms (Official Forms 22A-1, 22A-2, 22B, 22C-1, 22C-2). They can be grouped as follows:

- Four of the comments, from Carl Barnes, John Gustafson, Walter Oney, and the National Association of Consumer Bankruptcy Attorneys, set out detailed critiques of the means test forms.
- A comment from Bankruptcy Judge Mary Gorman expresses approval of the division of Official Forms 22A and 22C, but advocates a separate form for *Lanning*-type adjustments.
- A comment from Jeanne Hovenden adopts the Oney comment and makes four separate suggestions.
- A comment from Joe Wittman argues for an expense deduction for the cost of replacing an old vehicle, which is not specified in § 707(b)(2), and also supports the provision of proposed Official Form 22C-2 for adjustments based on *Lanning*-type changes in expenses and income.
- A comment from Norma Hammes suggests changes that would allow debtors with below-median income to claim means test expense deductions specified by § 1325(b)(3) for purposes of determining their disposable income under § 1325(b)(2).
- Other comments either suggest that no changes be made (Comment 12-BK-024), adopt one of the more detailed comments (Comments 12-BK-016, 12-BK-017, 12-BK-019, 12-BK-021, 12-BK-023, 12-BK-039, 12-BK-041), or make a general criticism about shading used in the proposed forms

(Comments 12-BK-032, 12-BK-039). One comment (12-BK-002) expresses appreciation for the greater clarity of all of the proposed forms.

The Administrative Office has honored Carl Barnes' request that his comments not be published, but he has been informed that the content of his comments will be discussed by the Advisory Committee.

This memo summarizes the four general critiques, using the author's initials to identify them, as well as the more limited Gorman, Hovenden, and Wittman comments, setting out the comments in the order of the lines of the forms. Several of Oney's suggestions were unclear, as indicated by question marks. Many of the comments are simple style suggestions, as to which no response is indicated. On comments to which a response appears appropriate, the response is set out in double-indented text. Responses indicating that a change in the form should be adopted or discussed are introduced by an asterisk.

General Comments on Means Test Forms

Several of the comments make general formatting comments (including criticism of the use of shading) that are not summarized here. Other general formatting comments will be dealt with in an overall reformatting of the proposed forms.

- CB: Use shorter instructions in the forms with a separate instruction book.
- CB: Start lines with titles rather than instructions. For example, in Form 22A-1, line 14, "Calculate your total current monthly income" should be "Current monthly income" and, Line 16, "Calculate the median family income that applies to you" should be "Applicable median family income".
- CB: Do not introduce dollar result lines with a letter title.
- CB: Synchronize line numbers across the means test forms.
- JG: Do not change the line numbers or split the forms.

*Not changing line numbers, as the Gustafson comment recognizes, would make dividing the 22A and C forms difficult. On the other hand, the Barnes suggestion of using the same numbering for identical paragraphs in the forms could be a substantial improvement. Barnes gives suggestions for the implementing this suggestion. See comments to Form 22C-1, Line 1, and Form 22C-2, introduction.

- WO: Create an official web-based application that will lead pro-se

filers through the process of completing the means-test forms. Publish a booklet that contains instructions for the forms along with all of the tables necessary to complete the forms.

These suggestions are beyond the scope of the published forms.

- WO: Completely reorganize the means test expense forms to use real-world expense categories—such as housing, transportation, medical, etc.—as the major organizing principle.

This suggestion might lead to an improvement in intelligibility, but it could also lead to greater confusion in applying the statutory requirements and would require substantial testing before it could be implemented.

- WO: The forms need to reflect the different chapters' rules as to whether a nonfiling spouse's income needs to be reported. Form 22A should refer to "Debtor 2 or nonfiling spouse." Form 22B should refer only to "Debtor 2." Form 22C should refer to "Debtor 1's spouse."

This suggestion contradicts the aim of the Forms Modernization Project, which consistently uses "Debtor 2" to mean a co-filer (as in the title of the case), as opposed to a non-filing spouse.

- WO: Repeating the line number just before the fill-in blanks should be consistently incorporated in all the new forms.
- WO: All instruction captions should end in a period.
- JG: Debtors should not be required to sign the forms.
- NACBA: Remove the "x" before signature lines.

The instructions in the forms cannot properly eliminate signatures by debtors. Under § 707(b)(2)(C), the means test forms—calculating debtors' current monthly income and the existence of a presumption of abuse—are "statements" made part of the "schedule" of current income and expenditures. Rule 1008 requires that "[a]ll . . . schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." The debtor's signature is necessary to give this required verification.

Although there is no similar requirement in chapter 13, current monthly income is essential in that chapter as well, for determining both the method of calculating projected disposable income and the length of the applicable commitment period. For chapter 13 debtors

with above-median income, the means test deductions are a necessary part of the calculation of projected disposable income. Accordingly, the means test forms function as “statements” in chapter 13 also, and also require the debtors’ verification.

- JG: The forms should not suggest that debtors ask for help at the clerk’s office of the bankruptcy court.

Many courts do provide help for pro se debtors, and so this suggestion in the forms is useful.

Comments on Form 22A-1

- WO: Provide a blank at the top where joint debtors filing separate forms can indicate they are doing so.

This should not be necessary. Separate forms would only be used if one of the married couple was exempted from means testing and the other was not. Suggesting separate forms otherwise would create significant problems, since the means test requires combined income and expense consideration.

Form 22A-1, Line 1 (exclusion for debtors without primarily consumer debts)

- CB: Label the checkboxes answering the question “Are your debts primarily consumer debts” 1a No and 1b Yes.
- CB: Include an instruction that business debts are not consumer debts.

Form 22A-1, Part 2 preamble

- WO: Instead of “complete a separate Chapter 7 Statement of Your Current Monthly Income (Official Form 22A-1),” state, “complete a separate copy of this form.”

Form 22A-1, Line 2 (exclusion based on military service)

- CB: Put the military exclusions on a separate form, containing more detailed instructions (such as the definition of disabled veteran), easily removable if the law expires, and only to be filled out if the debtor wants to claim the exclusion from means testing.

*This suggestion should be discussed.

- Jeanne Hovenden: Set out the text of 38 U.S.C. § 3741(1), defining “disabled veteran.”

- CB: Reverse the questions to ask first if the debts were incurred while on active duty and second, if so, whether the debtor is disabled.
- CB: Number the checkboxes, or have only a single checkbox, to conform to CM/ECF.
- WO: Use “continue on” as a signal that the user should proceed to the next line of the form and “go to” as a signal that the user should skip one or more lines and pickup with a line that is further removed.

Form 22A-1, Line 3 (alternative military service exclusion)

- CB: As with Line 2, use letter titles for the boxes, with detail required only if the exclusion is being claimed.
- WO: Change “before I file this bankruptcy case” [to “before the filing date of this bankruptcy case”?].

Form 22A-1, Line 4 (direction for completing the income section of the form, based on marital status)

- CB: Label each checkbox with a letter, allowing 22A-2, Line 2 to refer to the labels.
- WO: Always give an instruction whether to complete Column B [so state “Fill out only Column A” after the first check box?].
- WO: Omit the phrase “under nonbankruptcy law that applies” in describing legal separation.

Form 22A-1, instructions before Line 5

- WO: Change the instruction from stating that the income from joint property should be entered only in Column A to providing that income from joint property should be apportioned between the spouses.

This should not be necessary. There does not appear to be any situation in which the allocation of the income would make a difference in the form’s calculations.

Form 22A-1, Line 5 (gross wages)

- WO: Omit the phrase “under nonbankruptcy law that applies” in describing legal separation.

Form 22A-1, Line 6 (alimony and maintenance payments)

- WO: Do not include domestic support payments from one spouse to another.

*This suggestion should be adopted. If a separated couple filed jointly, it would be improper to have the income of a spouse paying support counted twice.

- WO: Include child support with alimony and maintenance payments.

This suggestion is incorrect. Alimony and maintenance payments are income to the recipient. Child support is not, and would only be counted if received regularly. Accordingly, child support is properly listed in Line 7.

Form 22A-1, Line 7 (contributions to household expenses)

- CB: Change the title of the line to “Contributions to household expenses from any source which are regularly paid for you or your dependents, including child support” so as to put the most important description first.
- WO: Remove examples of sources of payments of household expenses or reword the list “to be completely inclusive [?]”.
- WO: Revise the direction to include certain things “followed by a series of instructions not to include a subset of those things [?]”.
- Jeanne Hovenden: Give examples of spousal income not used for support of the debtor or the debtor’s dependents, such as separate spousal debt payments.

Form 22A-1, Line 8 (income from business)

- WO: Alert users of the form to the *Wiegand* interpretation of business expenses.
- JG: Revise the form to incorporate the *Wiegand* interpretation, which is stated to be the majority rule.

*The committee has repeatedly confirmed its interpretation of business income, contrary to *Wiegand*, 386 B.R. 238 (9th Cir. BAP 2008), and should not suggest in the form that the *Wiegand* approach should be used. See the memo of the Subcommittee on Consumer Issues to the Advisory Committee dated August 2, 2008. Only a few courts have written on the issue, and those that follow the form would

have little reason to do so. Accordingly, it is probably not useful to speak of a “majority” rule here. If the forms were to adopt *Wiegand*, a number of changes would have to be made, removing the deduction for business expenses in Line 8 and adding a new deduction in Form 22A-2.

- WO: Capture business income and expense separately for each spouse.

Form 22A-1, Line 9 (income from property)

- WO: Capture real estate income and expenses separately for each spouse.

Form 22A-1, Line 11 (unemployment compensation)

- WO: States that the instruction is confusing, but suggests no particular improvement.
- JG: Omit the alternative of omitting unemployment compensation (on the ground that it is a benefit under the Social Security Act and so excluded from the definition of “current monthly income” under § 101(10A)).

*The Gustafson suggestion should be discussed. If the Committee concludes that there is no good basis for the alternative in light of current case law, it could easily be removed.

Form 22A-1, Line 13 (income from other sources)

- CB: Do not use letters for detail lines and (in particular?) have the total without a letter.

Form 22A-1, Line 14 (total current monthly income)

- CB: Place the subtotals for CMI in two columns adjoining the right margin, with the total on the following line, also adjoining the margin.
- WO: [States that “Current Monthly Income” is confusing, but suggests no alternative.]

Form 22A-1, Line 15 (annual CMI)

- CB: Put the repeat of line 14 into an unnumbered instruction text: “Multiply monthly income from line 14 by 12 (Line 14 _____ x 12)” as is done on 22A-2 in line 35.
- CB: Change “Annual Income” to “Annualized CMI.”

*This stylistic suggestion should be accepted. This change would make the title more accurate.

- WO: Provide for the computation without copying the value from the preceding line.

Form 22A-1, Line 16 (median family income)

- CB: Identify the entry for “Number in Household” with “16b,” as on 22C-1.
- CB: Change the title to “Look up” rather than “Calculate” median state income .
- WO: Provide more explicit instructions for how to find the relevant material on the UST website.

Form 22A-1, Line 17 (whether to complete Form 22A-2)

- CB: Change the title to “How does your Annualized CMI compare to State Median? (Check one only)” so from the title the debtor can instantly grasp the purpose of the question.
- CB: Eliminate annualization of CMI by comparing monthly CMI to monthly state median income (by dividing annual median income by twelve or by having the UST report monthly median income directly).

This suggestion would make the form simpler to use, but it would conflict with § 707(b)(7), which requires that CMI be multiplied by 12 in order to be compared with median income.

- WO: Eliminate the direction “go to part 5” in both lines 17a and 17b (because people would naturally go on to the next line anyway).
- WO: Do not assign line numbers to the check boxes.
- WO: Omit directions about Form 22A-2. Include directions at the end of part 5 to refer to the check boxes at the top of the form.

Form 22A-1, Signature line

- WO: Change the attestation to “the best of the debtor’s knowledge and belief.”
- WO: Make the instruction to complete Form 22A-2 more prominent.

Comments on Form 22A-2

Form 22A-2, Introductory instruction

- WO: Repeat the instruction from Form 22A-1 that only above-median income debtors need to complete the form.

Form 22A-2, Part 2

- WO: Remove the dark shading and make the text flush with the left margin.
- WO: Rather than “National Standards,” “Local Standards,” etc., use terms like “Standardized Deductions” and “Personalized Deductions.”

Form 22A-2, Line 2 (marital income adjustment)

- CB: See comment to Form 22A-1, Line 4. If that suggestion is adopted, change this line to read “On 22A-1 [line 4] did you select box 4c Married Spouse Not Filing? If yes then fill out line 3.” Or, eliminate the line and replace it with an expanded instruction in Line 3.
- NACBA: Rather than allow a deduction here for the non-contributed income of a non-filing spouse, the income calculated on Official Forms 22A-1 and 22C-1 should never include income of a non-filing spouse not paid on a regular basis for the household expenses of the debtor or the debtor’s dependents.

The full committee debated this issue at length in 2005. The committee concluded that because § 707(b)(7)(B) excludes the income of a non-filing spouse from the debtor’s current monthly income only in situations of separation, the non-filing spouse’s income otherwise is included in the debtor’s “current monthly income.”

Form 22A-2, Line 3 (marital income adjustment, continued)

- CB: Remove the Yes/No checkboxes and use instruction text as is done in the present form.
- CB: If checkboxes are used, eliminate Yes/No and make the checkboxes the answers to an implied question. For example: “My spouse’s entire income was regularly contributed to household expenses ... (fill in \$0 below)” and “A portion of spouse[’s income] was NOT used for household expenses (fill in amounts below)”.
- CB: Instead of “Copy total here,” implement the totaling of a column into a right column using lines or blocks. Remove all use of “Copy total here”.

- CB: Remove letter designations from the subparts (particularly the total?). See comment at Form 22A-1, Line 13.
- WO: Replace the layout and wording of Lines 2 and 3 with that of Line 13 of Form 22C-2 [?].

Form 22A-2, Line 6 (IRS National Standard allowance for food, clothing, etc.)

- WO: Use exactly the same words in the form instructions as are used on the web tables that are given for users to consult.

Form 22A-2, Line 7 (IRS National Standard allowance for health care)

- CB: Reformat to make better use of space, including elimination of the “copy here” instruction, as in the current B22.
- CB: Label the result of the calculation as 7 rather than 7g.
- WO: Delete the phrase “out-of-pocket” in the caption.

The phrase “out of pocket” is used to distinguish this deduction from health care costs paid for by insurance.

- WO: Eliminate visual cues for the computation.

Form 22A-2, Line 8 (IRS National Standard allowance for housing, insurance and operating expense)

- JG states that insurance should not be deductible under the IRS National Standard for housing because it is better included in the secured debt deduction for mortgages. (This comment is actually made in connection with Official Form 22C-2, but applies to the same issue in Official Form 22A-2.)

The comment is mistaken. The IRS Local Standard for Housing and Utilities expressly includes insurance. *See* IRS Manual 5.15.1.9.

Form 22A-2, Line 9 (IRS Local Standard allowance for housing, mortgage or rent)

- CB: Label the Line as mortgage or rent “allowance,” rather than “expense.” (Same for all IRS deductions—allowances rather than expenses.)

* “Allowance” is a more accurate term, and should be substituted.

- CB: Label the result of the calculation as 9 rather than 9c.

- WO: As in Line 34, ask for the total amount due on the mortgages in the 60 months following the filing, and then instruct the user to divide by 60.

Form 22A-2, Line 10 (adjustment for allegedly inaccurate UST division of IRS housing allowance into acquisition and operation components)

- WO: Instruct debtors that they may take an additional deduction for reasonable and necessary housing expenses that are not captured by the IRS standards.

This suggestion is mistaken. The housing allowances are fixed, and the only statutory addition is for energy costs (set out in Line 28).

- WO: Alternatively, omit this line because debtors can always claim a special-circumstance deduction somewhere else.

Form 22A-2, Line 11 (IRS Local Standard for transportation)

- WO: Delete this line—see comment on Line 12.

Form 22A-2, Line 12 (IRS Local Standard for transportation, vehicle operation)

- WO: Insert an instruction at the beginning of the line to complete the line only if the debtor incurs operating costs for a vehicle.
- Combine the content of Lines 14 and 15 with this line.

Form 22A-2, Line 13 (IRS Local Standard for transportation, vehicle ownership)

- CB: Split into separate lines (13 and 14, no letters) for “Vehicle 1” and “Vehicle 2” as is done on the current forms.
- CB and Joe Wittman: Provide for a deduction of \$200 for debtors driving a six year-old car not covered by a secured debt.

*This suggestion should be discussed. The deduction for vehicles is allowed by § 707(b)(2)A(ii)(I) as part of the “monthly expense amounts specified under the [IRS] Local Standards.” The deduction for older vehicles is not part of the Local Standards, but is an additional deduction allowed by § 5.8.5.20.3 of the Internal Revenue Manual.

- WO: Ask for the total amount of payments coming due, and then direct division by 60.

- WO: Inform users with more than two cars that they may choose any two of those cars for purposes of completing this line.
- WO: For Line 13d, inform users how to determine the ownership expense for the second car (since the IRS allowance is a single amount for “two cars”).
- Jeanne Hovenden: Apparently recommends that lease payments be set out in Lines 13b and 13e (but incorrectly refers to Form 22A-1)

This is mistaken. The lines in question refer to the later deduction for secured debt payment, and they reduce the IRS Local Standard deduction for vehicles. Lease payments are not relevant.

Form 22A-2, Line 15 (IRS Local Standard for transportation, additional public transportation)

- CB: Switch with Line 14, so that a debtor with no cars can skip from Line 11 to what is now Line 14, and be finished with the local transportation lines.

Form 22A-2, Line 16 (taxes)

- WO: Remove the instruction not to include real estate taxes. Add a new line to capture direct payments for homeowner’s and auto insurance.

This suggestion is mistaken. Real estate taxes and insurance for homes and cars are included in the IRS National Standards and cannot properly be deducted separately.

Form 22A-2, Line 18 (life insurance)

- WO: Allow either spouse a deduction for policies on the life of the other spouse.

*This suggestion is recommended for adoption. The relevant IRS Collection Financial Standard (IRS Manual 5.15.1.10) allows a deduction for “a term policy on the life of the taxpayer only.” A term policy on the life of a debtor could include a policy for which a filing spouse paid the premiums, and so the suggestion would be correct in the situation of a joint filing. But it would not be correct in a situation where a debtor paid for life insurance on a non-filing spouse.

Form 22A-2, Line 22 (additional health care expenses)

- CB: Provide a calculation grid for the debtor to enter actual expenses and then reduce them by the Line 7 IRS allowance for health care expenses, as done for home and car expenses.

Form 22A-2, Line 24 (subtotal of IRS allowances)

- CB: Change “Add lines 16 through 23” to “Add lines 6 through 23”.

*This is an important correction of an error in the published form, earlier pointed out by Judge Walker.

- WO: Eliminate this subtotal line (as well as Lines 32 and 37), and simply add all of the expense allowances without subtotaling.

Form 22A-2, Line 25 (health insurance)

- WO: Place the question about what the debtor actually spends before the right column entry for the allowed deduction, or do not require a statement of the debtor’s actual health insurance expenditure.

- JG: Eliminate the deduction to the extent that the debtor does not actually pay for health insurance. (This comment is actually made in connection with Official Form 22C-2, but applies to the same issue in Official Form 22A-2.)

- Jeanne Hovenden: Suggests removing the question asking whether the debtor actually expends the deducted amount for health insurance.

Section 707(b)(2)(A)(ii) allows a deduction for “reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor.” This deduction is not limited to actual expenses, but the form directs a statement of actual expenses to allow a challenge to the reasonableness of the deduction claimed by the debtor.

Form 22A-2, Line 29

- WO: Omit instruction regarding triennial adjustment, but issue the forms in advance of the adjustments and include an explanation of the relevancy of the form dates at the beginning of any form that contains a number subject to adjustment.

Form 22A-2, Line 33 (current secured debt payments)

- CB: Remove the labels “d, e, and f” from the detail lines and put the multi-line detail section under line 33d. The total should be number 33 without a letter.

- WO: Track the statutory language exactly.

- WO: Remove boxes for tax and insurance escrow

The disclosure of deductions for taxes and insurance is appropriate. Tax and insurance escrows double-count expenses allowed in the IRS Local Standard for housing, and so may be subject to objection.

Form 22A-2, Lines 34 (secured debt cure payments)

- WO: Track the statutory language exactly.
- WO: Explain how this line differs from Line 33.

Form 22A-2, Lines 34, 35, and 36.

- CB: Remove the Yes/No checkboxes. If there is no data to state, provide that “None” be stated as the first entry.
- WO: Remove the checkboxes [and simply ask the user to complete the line if it applies?].

Form 22A-2, Line 35 (priority claims)

- WO: Make it clearer that arrears on ongoing priority claim obligations should be included.

Form 22A-2, Line 36 (Chapter 13 trustee fees)

- WO: Explain more clearly how to get the percentage fee charged by Chapter 13 trustees.

Form 22A-2, Line 40

- CB: Change the third checkbox instruction, “Go to line 42.” to read “Go to line 41”.

*This is an important correction of an error in the form and is recommended for adoption.

- WO: Make it clearer that there are two distinct bases for the presumption of abuse.

Form 22A-2, Line 41

- WO: Change the apparently conditional language so that it is clearer that every user must complete this line.

Form 22A-2, Line 43

- CB: Remove the Yes/No checkboxes. If there is no data to state, provide that “None” be stated as the first entry.
- WO: Allow debtors to claim appropriately justified expenses—such as for extraordinary housing or commuting costs—prior to computing their disposable income on line 39.

This suggestion is contrary to the statute. Section 707(b)(2)(B) allows special circumstances only to rebut a presumption of abuse that has arisen under the means test, not to determine whether a presumption of abuse arises in the first instance.

CB and WO: Most comments regarding Forms 22A apply to Forms 22C.

Comments on Form 22C-1

Form 22C-1, Line 1

- CB: Change the line number to 4, to correspond substantially with that line in Form 22A-1. Explain the absence of Lines 1-3 with references to that form.

*This suggestion should be discussed. The suggested references could use the following line identifiers in Official Form 22C-1:

1. An exclusion for debtors with primarily non-consumer debts is provided for in this line on Form B22A-1, applicable only in Chapter 7.
2. An exclusion for disabled veterans is provided for in this line on Form B22A-1, applicable only in Chapter 7.
3. An exclusion for certain reservists and members of the National Guard is provided for in this line on Form B22A-1, applicable only in Chapter 7.

- CB: Increase the marital choices to: 1a. Not Married; 1b. Married filing Jointly; 1c. Married Not Filing Jointly (including Legally Separated). Line 13 can refer to these choices.
- WO: Change “Debtor 2 or non-filing spouse” to “Debtor 1’s spouse.”

Form 22C-1, Line 4

- WO: Remove the implication that a co-filer’s income might not be included in Line 2, since it always must be included.

*This suggestion is an important correction of an error in the form and is recommended for adoption.

Form 22C-1, Part 2

- WO: Change the period to a colon.

Form 22C-1, Line 12

- WO: Add a new line to the income items, reflecting changes that have occurred or are virtually certain to occur.

This suggestion is mistaken as a matter of law. The *Lanning* holding only interprets projected disposable income under § 1325(b)(1). It does not change the manner in which current monthly income is determined under § 101(10A) or the applicable commitment period determination, using current monthly income, under § 1325(b)(4). But see the comments made as to Line 42.

Form 22C-1, Line 13

- CB: Remove “13a, 13b, and 13c” as detail line designations for types of non-family uses of the non-filing spouse’s income, and leave the final line simply “13.”
- CB: As suggested with respect to Line 1, Line 13 can skip the checkboxes for marital status and simply include the instruction “If you checked box 1c you may enter a marital adjustment; otherwise, fill in \$0.”
- WO: Remove the last direction to enter 0 “if this adjustment does not apply.”

Form 22C-1, Line 15

- CB: Change the instruction from annualizing CMI to dividing the state median income by twelve, with that monthly median income compared directly to the CMI in Line 14.

*This suggestion reflects the proposal made as to Form 22A-1, Line 17.

- WO: Change “Current Monthly Income” to “annual income for this part of the form.”
- WO: Omit the instruction to copy the value calculated in Line 14.

Comments on Form 22C-2

- CB: In order to keep the line numbers consistent between Forms 22A-2 and 22C-2, eliminate line 2 on 22A-1, then start 22C-2 this way:

Lines 1 to 3 are not used on this form.

Line 4. Current Monthly Income from 22C-1 line 14 _____

Line 5. Number of People Used in Determining Deductions from Income ____

Line 6. Food Clothing and other items ____

- Norma Hammes and NACBA: Allow debtors with below-median income to claim means test expense deductions specified by § 1325(b)(3) for purposes of determining their disposable income under §1325(b)(2).

This would require a determination that § 1325(b)(3), in addition to its stated application to above-median income debtors, also applies to below-median income debtors. The suggestion is probably better treated as a request for a new form, rather than a comment on the published means test forms.

Form 22C-2, Line 1

- WO: Advise users of *Johnson v. Zimmer*'s alternative test for number of dependents.
- JG: Adopt the position that the number of persons for application of the IRS expense allowances should be the same as the number of persons used for establishing the applicable median income.

*The full committee should discuss *Johnson v. Zimmer*, 686 F.3d 224 (4th Cir. 2012).

Form 22C-2, Line 27

- JG: Remove the instruction referring to "contributions to a religious or charitable organization" so as to avoid an argument by debtors that they may deduct religious educational expenses as a contribution to the religious organization that operates the school.

The instruction tracks the statutory language. Section 1325(b)(2)(A)(ii) allows deductions for amounts reasonably necessary to be expended "for charitable contributions . . . to a qualified religious or charitable entity or organization."

Form 22C-2, Line 29

- JG: Include an instruction not to deduct mortgage payments previously deducted as an operating expense in Line 6 (for calculating net income from rental and other real property).

*This suggestion is recommended for adoption.

Form 22C-2, Line 42

- WO: Address *Lanning* differently. Specifically, (1) make the adjustments before the determination of projected disposable income; (2) allow the adjustment without any time limit; (3) allow changes to affect computing of the applicable commitment period; remove the increase/decrease column and replace it with an appropriate sign (+ or -) in front of the change amount; (5) clarify that an amendment to this form should “speak as of the petition date” [??]; (6) clarify that a virtually certain decrease in expenses should not increase the required payment to unsecured creditors.

- NACBA: Address *Lanning* differently. Specifically, (1) provide that the income or expenses “known or virtually certain” on the plan confirmation date are to be used, regardless of proximity, eliminating the twelve month limit; (2) provide for the *Lanning* adjustments apply to each line item; (3) provide for *Lanning* adjustments to change the applicable commitment period; (4) limit *Lanning* adjustments to exceptional or unusual situations; and (5) allow the debtor to calculate projected disposable income after taking the adjustments into account, in accordance with the *Lanning* decision.

- Mary Gorman: The *Lanning* adjustments should be set out in a separate form.

*The Committee discussed *Lanning* when this proposal was made and disagreed with the legal positions taken in the comments. However, a further discussion of *Lanning* may be appropriate.

TAB 7D

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Date: March 11, 2013

To: Bankruptcy Rules Advisory Committee

From: Judge Arthur Harris and Jill Michaux

Re: Reordering / Relettering Bankruptcy Schedules

It is our understanding that the Forms Subcommittee will recommend publication for public comment of the remaining individual bankruptcy forms. The set of forms recommended by the Forms Modernization Working Group includes a new numbering scheme for all bankruptcy forms. While we do not suggest changing the new 3-digit scheme for numbering bankruptcy forms, we strongly believe that a more incremental approach should be used in relettering bankruptcy Schedules A through J (proposed Forms 106A through H).

The current lettering scheme of Schedules A through J (officially, Schedules B6A through B6J) has been in place since approximately 1991. The proposal from the Forms Modernization Working Group:

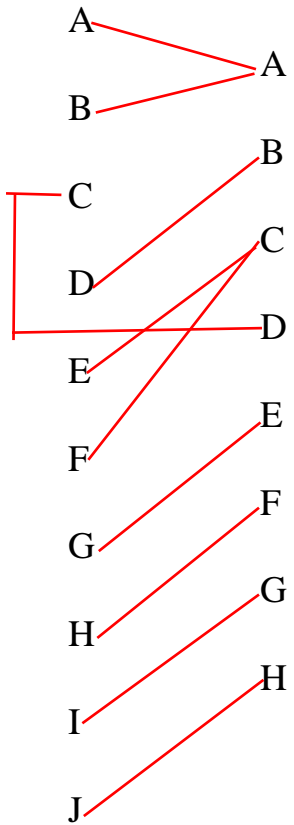
combines what is in existing Schedules A and B into a new single Schedule A;
combines what is in existing Schedules E and F into a new single Schedule C;
relabels existing Schedule D as a new Schedule B;
relabels existing Schedule C as a new Schedule D;
relabels existing Schedule G as a new Schedule E;
relabels existing Schedule H as a new Schedule F;
relabels existing Schedule I as a new Schedule G; and
relabels existing Schedule J as a new Schedule H.

Our Alternative Proposal would stick as closely as possible to the existing scheme by:

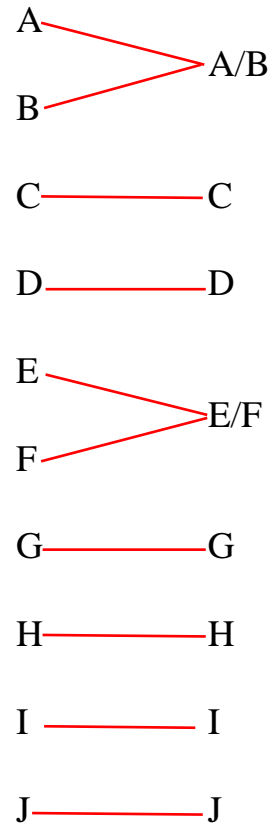
- labeling as “Schedule A/B” the new schedule that combines what is in existing Schedules A and B;
- labeling as “Schedule E/F” the new schedule that combines what is in existing Schedules E and F; and
- retaining the same labels for Schedules C, D, G, H, I, and J.

A comparison of the lettering for the existing schedules, the Forms Mod Proposal, and our Alternative Proposal appears on the next page.

Existing Schedules Forms Mod Proposal



Existing Schedules Alternative Proposal



As you can see, the Alternative Proposal makes minimal changes to the lettering and ordering of the bankruptcy schedules, which are the principal forms examined by consumer bankruptcy practitioners, trustees, judges, and court staff. The few changes are intuitive. Existing Schedules A and B are combined into a new “Schedule A/B,” and existing Schedules E and F are combined into a new “Schedule E/F.”

While the Forms Modernization Working Group voted strongly in favor of the new numbering system for bankruptcy forms, there is no reason why our suggestion, which is limited to lettering bankruptcy schedules, cannot be adopted alongside the new numbering system.

We have about 350 active bankruptcy judges with a median of 12 years of experience as bankruptcy judges. There are hundreds if not thousands of bankruptcy trustees, with comparable or more experience, and thousands of bankruptcy practitioners. Most of us are familiar with Schedules A through J, which have been around for more than twenty years. By keeping close to the existing order, the knowledge of what information is associated with each schedule will not be lost or have to be relearned. In addition, there will be a transition period of several years where practitioners, trustees, judges, and court staff will be working with two sets of forms: the existing forms for cases pending before the effective date of the new forms and new forms for cases filed after the effective date of the new forms. For example, amended schedules are often filed in Chapter 13 cases, which can remain pending for five years. Having two sets of schedules where, for example, “Schedule B” means something different depending upon whether it is the old set or the new set, is certain to sow unnecessary confusion.

We have a bankruptcy system that works well. Though modernization of the forms is appropriate, one of our goals has been to make our forms less confusing. Our Alternative Proposal is designed to minimize confusion during the implementation and transition to the new forms. Our incremental approach would also make it easier to build support for the new forms among constituencies that are reluctant to accept changes that are truly beneficial. By publishing new schedules whose lettering scheme more closely aligns with the status quo, we will also avoid having to address a flurry of negative comments that would otherwise likely result.

Finally, both of us offer our services to make whatever changes are needed to have the relettered forms ready for the Standing Committee’s June meeting.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SCOTT MYERS

RE: TRIENNIAL AUTOMATIC DOLLAR ADJUSTMENT

DATE: FEBRUARY 26, 2013

As provided in section 104(a) of the Bankruptcy Code, there will be automatic adjustments of the certain dollar amounts stated in various sections of the Bankruptcy Code and in one section of title 28 of the U.S. Code. The dollar adjustments, which are rounded to the nearest \$25, apply to cases filed on or after April 1, 2013, and also affect several Official Bankruptcy Forms and Director's Forms.

The dollar amounts are automatically adjusted every three years to reflect the change in the Labor Department's Consumer Price Index (CPI) for All Urban Consumers. This year, there is a 6.3 percent adjustment, which is based on the difference between the December 2009 CPI and the December 2012 CPI. The adjustment affects certain dollar amounts found in sections 101(3), 101(18), 101(19A), 101(51D) 109(e), 303(b), 507(a), 522(d), 522(f)(3), 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of title 11 of the U.S. Code and in section 1409(b) of title 28 of the U.S. Code. A chart including the old and new dollar amounts was published at page 12,089, in the Federal Register on February 21, 2013. The Federal Register notice can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2013-02-21/pdf/2013-03998.pdf>.

Seven Official Bankruptcy Forms and two Director's Procedural Forms, which incorporate the adjusted dollar amounts, will be amended effective on April 1, 2013. The affected forms are Official Bankruptcy Forms 1, 6C, 6E, 7, 10, 22A, and 22C, and Director's Procedural Forms 200 and 283. The revised forms, including a list of the changes by form, page, and line number, are posted on the pending forms changes page on the Judiciary's website at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: COMMENTS ON PUBLISHED AMENDMENTS TO
RULES 7008, 7012, 7016, 9027, AND 9033

DATE: MARCH 10, 2013

The Advisory Committee has received eight comments on all or part of the proposed amendments to the Bankruptcy Rules published last year in response to *Stern v. Marshall*. 131 S. Ct. 2594 (2011). In the main, the comments express support for the proposed amendments but raise five issues: (1) whether to retain the terms “core” and “non-core,” which the amended rules would remove; (2) whether references to the “bankruptcy *court*” in the published amendments should revert to the “bankruptcy *judge*”; (3) whether to provide that a litigant may consent to final adjudication by a bankruptcy judge with respect to part of, but not the whole, proceeding; (4) whether to require a statement as to consent when a litigant proceeds by motion before filing a formal pleading; and (5) whether to provide procedures for treating as proposed findings and conclusions a bankruptcy judge’s decision entered as a final order or judgment when that decision is later determined to be beyond the bankruptcy judge’s final adjudicatory power.

The Subcommittee discussed these issues during its February 27, 2013, conference call. Issues (1), (2), and (5) have already been considered by the Advisory Committee, and the Subcommittee did not find the comments to raise new concerns that would justify revisiting those issues. Issues (3) and (4), on the other hand, had not been considered previously. The Subcommittee nevertheless concluded that the comments raising those issues, although presenting possible suggestions for future rulemaking, did not require alteration of the published

amendments. Similarly, the Subcommittee concluded that a comment by the Bankruptcy Clerks Advisory Group regarding the requirement of service of notice by mail under Rules 9027 and 9033 might be considered for future rulemaking but was beyond the scope of the *Stern*-related amendments. **Accordingly, the Subcommittee recommends that the Advisory Committee seek final approval of the published amendments from the Standing Committee.**

General Comments

1. Douglas N. Candeub (Attorney, Wilmington, Delaware) (12-BK-003)

The Advisory Committee should not abandon references to “core” and “non-core” proceedings in the rules. Those terms could be retained while adding a statement regarding consent in all proceedings.

2. National Conference of Bankruptcy Judges (NCBJ) (12-BK-008)

The NCBJ approves of the published rule amendments to the extent that they require a statement regarding consent in all adversary proceedings. But the terms “core” and “non-core” should not be deleted from the rule. In the NCBJ’s view, the court and parties benefit from knowing early in the proceeding whether the parties view the proceeding as core or non-core.

- **Response to comments:** The Advisory Committee concluded that the terms core and non-core raised the potential for confusion, because a litigant could allege (or agree) that a proceeding was a core proceeding as a statutory matter but later contend that the proceeding was not “core” as a constitutional matter under *Stern*. The potential benefits from retaining those terms are outweighed by the risk of unnecessary confusion.

3. Chief Judge Christopher M. Klein (Bankr. E.D. Cal.) (12-BK-033)

The term “bankruptcy court,” which was substituted in the published rules in place of “bankruptcy judge,” should be defined. The Bankruptcy Rules apply in cases and proceedings under title 11, whether before district judges or bankruptcy judges. Accordingly, reference to the “bankruptcy court” could be read to include a district judge that is sitting in bankruptcy (such as upon withdrawal of the reference). In those circumstances, there is no need for a statement regarding consent, because an Article III judge is presiding.

A new definition of “bankruptcy court” should be added to Rule 9001 in conjunction with the *Stern*-related amendments. The definition would state that the term “is used to identify judicial officers appointed pursuant to 28 U.S.C. § 152 (bankruptcy judges) who are not vested with the full judicial powers of the United States that are exercised by an Article III judge.”

- **Response to comment:** This comment is well taken in the sense that a district judge sitting in bankruptcy could be regarded as the “bankruptcy court.” A statement regarding consent would be unnecessary in that situation. The Subcommittee concluded, however, that a party was unlikely to be confused by the rule’s use of “court” instead of “judge.” In any event, the party would face no prejudice by mistakenly pleading consent, or lack of consent, before a district judge.

Rules 7008 and 7012

1. States' Association of Bankruptcy Attorneys (SABA) (12-BK-010)

We approve of the basic approach of the amendments. The amended rules should make clear that a party may consent to some aspects of a bankruptcy court's determination and not others. For example, a state may consent to final adjudication by a bankruptcy court on the question whether the automatic stay applies to a police or regulatory action but not consent to a final adjudication by the bankruptcy court of the underlying substantive claim. The published amendment could be changed as follows:

(a) Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court with respect to some or all matters at issue in the adversary proceeding.

2. National Bankruptcy Conference (NBC) (12-BK-037)

a. Rules 7008 and 7012(b) should be revised to permit a party to consent to the bankruptcy court's final adjudication of specific issues or claims in the proceeding.

- **Response to comments:** The SABA and NBC comments observe that, in principle, a litigant should be able to limit the extent of its consent to final adjudication by the bankruptcy court. On the other hand, that may present practical problems of judicial administration by requiring the bankruptcy judge to enter judgment as to some issues or claims but make findings and conclusions as to others. Although there is merit in the comments, they point to a current feature of the Bankruptcy Rules and are therefore beyond the scope of the published

amendments. The Bankruptcy Rules do not expressly permit such a limited consent, but neither do they expressly prohibit it. The published amendments do not alter the rules on this issue. These comments may be worthy of consideration for future rulemaking by the Advisory Committee.

Rule 7016

1. National Conference of Bankruptcy Judges (12-BK-001)

The addition of subpart (b) to Rule 7016 is unnecessary and confusing. It suggests that the bankruptcy court must choose one of three possible dispositions at an early stage of an adversary proceeding. This is an intrusion on the court's inherent case management authority. The proposed amendment does not fill the gap created by removing the required allegation as to whether a proceeding is core or non-core. Even if the Advisory Committee does not retain the requirement that parties declare whether a proceeding is core or non-core, Rule 7016 should be kept in its current form.

- **Response to comment:** The proposed amendment to Rule 7016 does not limit the bankruptcy court's case management authority. The rule gives the judge three options: (1) to hear and determine the proceeding; (2) to hear the proceeding and issue proposed findings of fact and conclusions of law; or (3) to take some other action. These options leave the decision as to the appropriate course of action to the bankruptcy judge, as the Committee Note confirms.

2. Judge S. Martin Teel, Jr. (Bankr. D.D.C.) (12-BK-009)

The proposed changes to the rules do not address the treatment of a bankruptcy judge's decision, entered as a final order or judgment, if it is later determined that the bankruptcy judge lacked constitutional authority to enter a final order or judgment. If Rule 9033 is not amended to address this issue (see comment below), then the Committee Note in Rule 7016 should be changed to add language expressly providing for the treatment of the bankruptcy court's decision as proposed findings of fact and conclusions of law.

- **Response to comment:** This comment is similar to a suggestion (12-BK-H) by Professor Alan Resnick, which was considered by the Advisory Committee at its fall 2012 meeting. Acting on the recommendation of the Subcommittee on Privacy, Public Access, and Appeals, the Advisory Committee declined to take immediate action on the suggestion. One concern raised by that Subcommittee's memo on that suggestion is that adopting it would depart from the Advisory Committee's cautious approach to *Stern*-related amendments. Because a number of district courts have addressed the issue raised by this comment through amendments to the standing order of reference, it would be preferable to await an assessment of how those developments have worked in practice before more extensive rulemaking is considered.

3. National Bankruptcy Conference (12-BK-037)

a. Rather than permit the bankruptcy court to decide *Stern* issues on its own motion, proposed Rule 7016 should require notice and a hearing. In the alternative, the Court should make a formal decision not to hold a hearing rather than simply deciding *Stern* issues on its own.

- **Response to comment:** The proposed amendment is consistent with 28 U.S.C. § 157(b)(3), which gives a bankruptcy judge the power to decide whether a proceeding is a core proceeding “on the judge’s own motion or on timely motion of a party.”

b. The proposed rule, which deals with pre-trial procedures, does not address the treatment of *Stern* issues that arise in the resolution of motions to dismiss or other preliminary rulings. The proposed rules should provide a mechanism for a party to raise *Stern* issues if the party has not yet filed an answer or other pleading.

- **Response to comment:** The NBC raises a valid point regarding the timing of *Stern*-related issues. Proposed Rules 7008 and 7012 require in the pleadings a statement as to consent, but *Stern* issues could arise before the filing of a responsive pleading. *See, e.g., Kirschner v. Agoglia*, 476 B.R. 75 (S.D.N.Y. 2012) (motion to dismiss). The NBC’s comment, however, appears to assume that proposed Rule 7016 (titled “Pre-Trial Procedures”) applies only after the close of the pleadings. For two reasons, the rule is not so limited. First, the text of proposed Rule 7016(b) directs the bankruptcy judge to decide the appropriate procedure “on its own motion or a party’s timely motion.” That timely motion could be a pre-answer motion that raises a *Stern* objection. Second, Civil Rule 16, incorporated by reference in Rule 7016, is not restricted to the stage of litigation after an answer is filed. Nevertheless, the NBC’s comment does point out a potential gap in the proposed procedure if a party (i) files a pre-answer motion raising various defenses to a claim without objecting to the bankruptcy

judge's authority to enter final orders or judgment, and then, after the denial of the motion, (ii) files an answer that objects to the bankruptcy judge's adjudicatory authority. Because this scenario is possible under the current Bankruptcy Rules, however, the Subcommittee believes the comment goes beyond the scope of the proposed amendments. The Advisory Committee may wish to consider the comment as a suggestion for future rulemaking.

Rule 9027

1. Insolvency Law Committee of the Business Law Section of the State Bar of California
(12-BK-031)

The rule should clarify whether, in a removed action, a statement regarding consent included in a party's first pleading or motion satisfies the requirement of the rule, or whether a separate statement is required. The Committee Note states that no statement is required if a party to a removed action has not yet filed a pleading prior to removal, because the statement will be filed in a responsive pleading in accordance with Rule 7012. But that party may choose to file a pre-answer motion instead. The rule could also be read to require a separate statement even if the party files a pleading.

- **Response to comment:** This comment follows along the lines of the NBC's comment on proposed Rule 7016.

2. Bankruptcy Clerks Advisory Group (BCAG) (12-BK-040)

Proposed Rule 9027(e)(3) requires the party filing a statement regarding consent upon removal to "mail a copy to every other party to the removed cause of action." "Mail" should be

changed to “transmit” because service can be accomplished electronically. Furthermore, the copy of the statement is unnecessary when a notice would be sufficient.

- **Response to comment:** BCAG’s comment addresses language in the rule to which no amendment was proposed. The references to mailing exist in the current rule and should not be addressed as part of the limited amendments proposed to deal with *Stern*. The Advisory Committee may wish to consider the comment as a suggestion for future rulemaking with respect to mailing requirements for notice under the Bankruptcy Rules.

Rule 9033

1. National Conference of Bankruptcy Judges (12-BK-001)

The requirement that the clerk serve proposed findings of fact and conclusions of law “by mail and note the date of mailing on the docket” should be altered to reflect electronic service. A mailing requirement is anachronistic and unnecessary. That portion of the rule should be eliminated, so that the rule would simply read “the clerk shall serve forthwith copies on all parties.”

2. Bankruptcy Clerks Advisory Group (12-BK-040)

Rule 9033(a) should not require the clerk to serve copies of the proposed findings and conclusions “by mail.” BCAG endorses the NCBJ’s comment that this language be revised to state: “The clerk shall serve forthwith copies on all parties.”

- **Response to comments:** These comments address language in the existing rule beyond the scope of the *Stern*-related amendments.

3. Judge S. Martin Teel, Jr. (12-BK-009)

Rule 9033 should address the treatment of a bankruptcy judge's decision that is entered as a final order but later determined to be beyond the bankruptcy judge's constitutional authority to adjudicate finally. A new subpart of the rule should provide that the decision in those circumstances should be treated as proposed findings and conclusions. The subpart could provide that the bankruptcy court may indicate whether its decision should be so treated if it is determined that the judge lacked the authority to enter a final order or judgment.

The approach taken by some courts, such as the Southern District of New York, that have adopted an amended standing order of reference is insufficient. The S.D.N.Y. order does not include a deadline for the parties to file objections to the decision now deemed proposed findings and conclusions, and the briefs filed on appeal would not necessarily cover all objections to those findings and conclusions.

- **Response to comment:** This comment was addressed in connection with Judge Teel's related comment concerning Rule 7016.

4. Chief Judge Christopher M. Klein (12-BK-033)

a. Rule 9033 should designate a process for transmitting the report and recommendation to the district court, perhaps as in proposed Rule 8003(d). The rule should provide for the bankruptcy clerk to certify to the district court that objections to the proposed findings and conclusions were, or were not, filed.

- **Response to comment:** This comment raises issues that are beyond the limited scope of the *Stern*-related amendments. The Bankruptcy Rules do not need to

address, at this point, the mechanism by which the bankruptcy court and district court coordinate the handling of objections to proposed findings and conclusions.

b. A uniform national rule should be in place to determine the procedures for deeming a bankruptcy judge's decision to be proposed findings and conclusions on appeal if the district court determines that the entry of a final judgment exceeded the authority of the bankruptcy judge. The rule should also authorize a bankruptcy appellate panel (BAP) to transfer an appeal to a district court if the BAP determines that the decision below was beyond the constitutional authority of the bankruptcy judge to enter final judgment.

- **Response to comment:** This comment was addressed in connection with Judge Teel's comment on Rule 7016.

5. National Bankruptcy Conference (12-BK-037)

Because a bankruptcy court may not know whether its decision will later be determined to be beyond its constitutional authority to enter final judgment, the difference in procedures between proposed findings and conclusions under Rule 9033 and judgments entered under Rule 7054 and Civil Rule 54(a) should be narrowed. If a district court concludes that a decision entered as a final judgment should be treated as proposed findings and conclusions, the losing party may be deprived of procedural rights under Rule 9033 to object to those proposed findings and conclusions.

- **Response to comment:** This comment was addressed in connection with Judge Teel's comment on Rule 7016.

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TAB 9A

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Comments on amendments to Rules 8001 – 8028, and Rules 9023 and 9024,

Item 9A and proposed amendments to Rules 8001 – 8028, and
Rules 9023 and 9024 will be distributed separately.

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TAB 9B

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TAB 9B.1

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEE ON FORMS
RE: FORMS TO IMPLEMENT REVISED PART VIII RULES
DATE: MARCH 10, 2013

The revised Part VIII rules, which were published for comment in August 2012, require the adoption of three new Official Forms related to bankruptcy appeals. Proposed Rule 8005(a) requires a party that desires to have an appeal heard by a district court, rather than by a bankruptcy appellate panel, to file a statement of election using the appropriate Official Form. Proposed Rules 8015(a)(7)(C)(ii) and 8016(d)(3) provide for the use of an Official Form to certify that a brief satisfies the type-volume limitation on length of briefs.

Three forms have been drafted to implement these provisions: (1) Official Form 17A—a revised and renumbered Notice of Appeal that includes an optional Statement of Election by the appellant to have the appeal heard by the district court; (2) new Official Form 17B—Optional Appellee Statement of Election to Proceed in District Court; and (3) new Official Form 17C—Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2). At the spring meeting the Committee will consider whether to recommend them for publication for public comment this summer.

The Proposed Forms

The Subcommittee on Privacy, Public Access, and Appeals has recommended that a form for the appellant's optional statement of election be included in the notice of appeal in order to ensure compliance with the statutory requirement that an appellant make its election to have the

district court hear its appeal “at the time of filing the appeal.” 28 U.S.C. § 158(c)(1)(A). The form therefore would change the current requirement of Rule 8001(e)(1) that the statement of election be contained in a “separate writing.”

The Optional Appellee Statement of Election to Proceed in the District Court is the Official Form that an appellee would file if it wants the appeal to be heard by the district court and the appellant did not make that election. To comply with § 158(c)(1)(B), the appellee would have to file the form within 30 days after service of the notice of appeal.

The third proposed form provides a means for a party to certify compliance with the provisions of the bankruptcy appellate rules that prescribe limitations on brief length based on number of words or lines of text (the “type-volume limitation”). Proposed Official Form 17C is based on Appellate Form 6, which implements the parallel provisions of FRAP 32(a)(7)(B). Unlike Appellate Form 6, proposed Form 17C does not request information about compliance with typeface and type style requirements for briefs. Rules 8015 and 8016 only require certification of compliance with the type-volume limitation.

If the proposed forms are published this August, they would be on schedule to take effect on December 1, 2014, the same effective date as is anticipated for the revised Part VIII rules.

TAB 9B.2

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United States Bankruptcy Court for the: _____ District of _____

Fill in this information to identify the case and adversary proceeding involved: _____ per _____

If applicable, Adversary Proceeding Name: _____ v. _____
Plaintiff Defendant

Adversary Proceeding number _____

Notice of Appeal and Statement of Election

2014

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s) _____

2. Position of appellant(s) in the case or proceeding involved in this appeal

For appeals involving adversary proceedings.

- Plaintiff
- Defendant
- Other (describe) _____

For appeals that do not involve adversary proceedings

- Debtor
- Creditor
- Trustee
- Other (describe) _____

Part 2: Identify the subject of this appeal

Describe the judgment, order, or decree appealed from: _____

State the date on which the judgment, order or decree was entered _____
(month) (day) (year)

Part 3: Identify the other parties to this appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: _____ Attorney: _____

2. Party: _____ Attorney: _____

Part 4: Optional election to have this appeal heard by the District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check the box below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Signature

Signature of appellant(s) or attorney for appellant(s)

Name, address, and telephone number of attorney:

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

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COMMITTEE NOTE

The form is amended and renumbered. It is amended to add to the Notice of Appeal an optional Statement of Election to have the appeal heard by the district court rather than by the bankruptcy appellate panel. Current Rule 8005(a) eliminates the requirement, imposed by former Rule 8001(e), that a separate document be used in making an election to have an appeal heard by the district court rather than the bankruptcy appellate panel, and it replaces this requirement by mandating the use of an Official Form for such an election. Form 17A effectuates Rule 8005(a)'s requirement for election by an appellant by combining the notice of appeal and statement of election. It thereby facilitates compliance with the statutory requirement that an appellant wishing to make an election do so at the time of filing the appeal. 28 U.S.C. § 158(c)(1)(A).

The statement of election in Part 4 is applicable only in districts for which appeals to a bankruptcy appellate panel have been authorized. If an appeal is being taken from a bankruptcy court located in a circuit that does not have a bankruptcy appellate panel or in a district that has not authorized appeals to be heard by the circuit's bankruptcy appellate panel, the appellant should not complete Part 4.

When a bankruptcy appellate panel is available to hear an appeal, completion of Part 4 is optional. An appellant that wants its appeal heard by the bankruptcy appellate panel should not complete this part.

The form is renumbered as Official Form 17A because a new companion form—Optional Appellee Statement of Election to Proceed in the District Court—is designated as Official Form 17B, and another bankruptcy appellate form—Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)—is designated as Official Form 17C.

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Fill in this information to identify the case and adversary proceeding involved:

United States Bankruptcy Court for the: _____ District of _____
 Case Name: In re _____ Case number _____
 If applicable, Adversary Proceeding Name: _____ v. _____
 Plaintiff Defendant
 Adversary Proceeding number _____ Bankruptcy Appellate Panel case number (if known) _____

Optional Appellee Statement of Election to Proceed in the District Court

2014

This form should be filed only if all of the following are true:

- this appeal is pending in a district served by a Bankruptcy Appellate Panel,
 - * the appellant(s) did not elect in the Notice of Appeal to proceed in the District Court rather than in the Bankruptcy Appellate Panel,
- and
- the appellee(s) do elect to proceed in the District Court.

Part 1: Identify the appellee(s)

1. Name(s) of appellee(s) _____
2. Position of appellee(s) in the case or proceeding involved in this appeal

For appeals involving adversary proceedings.

- Plaintiff
- Defendant
- Other (describe) _____

For appeals that do not involve adversary proceedings

- Debtor
- Creditor
- Trustee
- Other (describe) _____

Part 2: Election to have this appeal heard by the District Court (applicable only in certain districts)

Appellee(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Signature

 Signature of appellee(s) or attorney for appellee(s)

Name, address, and telephone number of attorney:

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COMMITTEE NOTE

This form is new. It is the Official Form that an appellee must use to state its election to have an appeal heard by the district court rather than by the bankruptcy appellate panel. If an appellee desires to make that election and the appellant has not already done so in the Notice of Appeal, the appellee must file this form within 30 days of service of the Notice of Appeal. 28 U.S.C. § 158(c)(1)(B).

The form is applicable only in districts for which appeals to a bankruptcy appellate panel have been authorized. If an appeal is being taken from a bankruptcy court located in a circuit that does not have a bankruptcy appellate panel or in a district that has not authorized appeals to be heard by the circuit's bankruptcy appellate panel, the appellee should not complete this form.

When a bankruptcy appellate panel is available to hear an appeal, completion of the form is optional. An appellee that wants its appeal heard by the bankruptcy appellate panel should not complete this form.

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Form 17C. Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2) 2014

This brief complies with the type-volume limitation of Rule 8015(a)(7)(B) or 8016(d)(2) because:

this brief contains [*state the number of*] words, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D), or

this brief uses a monospaced typeface having no more than 10½ characters per inch and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D).

Signed _____

Attorney for _____

Dated _____

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COMMITTEE NOTE

This form is new. Rules 8015(a)(7)(B) and 8016(d)(2) specify the maximum number of words or lines of text that appellate briefs filed in a district court or bankruptcy appellate panel may contain. When the length of a brief is calculated in this manner rather than by number of pages, the cited rules require an attorney or unrepresented party to certify that the brief complies with the type-volume limitation. Completion of this form satisfies that certification requirement.

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TAB 10

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER
INSOLVENCY

RE: ELECTRONIC SIGNATURES OF PERSONS OTHER THAN FILING
ATTORNEYS

DATE: MARCH 13, 2013

The Subcommittee was asked to consider the advisability of proposing a national bankruptcy rule that would permit the use of electronic signatures of debtors and other individuals who are not registered users of CM/ECF, without requiring the retention of the original document bearing a handwritten signature. Currently the use of electronic signatures in bankruptcy courts is governed by local rules. Bankruptcy Rule 5005(b)(2) provides in part that a “court may by local rule permit or require documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes.”

Many of the local rules that deal with electronic signatures are based on Model Rules for Electronic Case Filing that were approved by the Judicial Conference of the United States (“JCUS”) in 2001 and modified in 2003. The model rules were recommended by the Committee on Court Administration and Case Management (“CACM”), which developed them along with members of the Committee on Information Technology and the Standing Committee. The introduction to the model rules explains that courts are “free to adapt the provisions of these model rules as they choose.”

Two of the model rules relate to signatures on electronically filed documents. Model Rule 8 (Signatures) provides that the “user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User’s signature on all electronic documents filed with the court. . . . for any . . . purpose for which a signature is required in connection with proceedings before the court.” Regarding the signature of an individual without a CM/ECF user log-in and password (a “non-Filing User,”) Rule 8 states that an electronically filed document should represent the signature by “a ‘s/’ and the name typed in the space where a signature would otherwise appear, or as a scanned image.”

Model Rule 7 (Retention Requirements) imposes a duty on a Filing User to maintain in paper form any electronically filed document that required the original signature of someone other than the Filing User. The Commentary to the rule states without further elaboration that, “because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future.” The rule does not specify the retention period, but instead leaves that decision up to each district.

Many bankruptcy courts today have local rules that require the attorney (Filing User) to preserve original documents bearing the debtor’s (non-Filing User’s) signature for a specified period of time. The retention periods vary. A few bankruptcy courts do not require retention of the original document so long as the attorney submits a declaration manually signed by the debtor attesting to the truth of the information electronically filed or, in other courts, files a scanned image of the signature page with the debtor’s original signature.

Concerns Raised About the Retention Requirement

This issue of the retention of documents that are filed electronically with the debtor's signature was initially brought to the Advisory Committee by the Forms Modernization Project. It raised the issue in response to concerns expressed by debtors' attorneys about their need to retain petitions, schedules, and other individual-debtor filing documents that will be lengthier in the proposed restyled format. Representatives of the Department of Justice also expressed concerns about the retention of original documents by debtors' attorneys and the lack of uniformity regarding the retention period. The Department made a recommendation to the Next Gen's Additional Stakeholders Functional Requirements Group that documents bearing wet signatures, signed under penalty of perjury, be retained by the clerk of court for five years—the statute of limitations for fraud and perjury proceedings—unless a national rule were adopted declaring that electronic copies of such documents in the court's ECF system constitute legally sufficient best evidence in the absence of an original signed document.

After the fall 2012 meeting, the Advisory Committee received a copy of a memorandum from the chair of CACM to the chair of the Standing Committee that requested the Standing Committee to “explore creating a federal rule regarding electronic signatures and the retention of paper documents containing original signatures.” CACM suggested three possible approaches to the issue:

- Its preference is the promulgation of a national rule specifying that an electronic signature in the CM/ECF system is *prima facie* evidence of a valid signature. Under this proposal, the burden would be placed on persons opposing the validity of the signature to prove with appropriate evidence that an electronic signature was not valid.

- The second approach would be to require courts to retain copies of all originally-signed, paper documents that are electronically filed. According to CACM, this method would address problems with law firms retaining such records, but would require a substantial amount of work for the courts.
- According to CACM, a third alternative would be a policy option. CACM could ask JCUS to specify the retention period for original documents containing the signature of a non-Filing User.. CACM noted, however, that such a policy would not address the problems for external users because of lack of uniformity in local rules, and it would not encourage the reliance on electronic signatures.

Dr. Johnson's Report on Local Rules and Procedures

At the request of the Committee, Dr. Molly Johnson of the Federal Judicial Center collected and reviewed local bankruptcy rules regarding signatures of debtors on documents that are filed electronically and requirements for the retention of original documents bearing a non-Filing User's signature. For a point of comparison, she also reviewed local district court rules regarding signatures by non-Filing Users and related retention requirements. In connection with her report, Dr. Johnson reviewed a recent Office of Management and Budget document on the use of electronic signatures in federal transactions and solicited the views of interested parties about possible rule changes that would eliminate retention requirements. Dr. Johnson's report is attached as an appendix to these materials.

Dr. Johnson found that the vast majority of bankruptcy courts and almost all district courts require the retention, usually by the filing attorney, of the signed original of electronically filed documents bearing a non-Filing User's handwritten signature. Of the few courts that do not

require retention, some require a declaration signed by the non-Filing User to be filed, and a smaller number allow a scanned signature to be treated as an original signature.

Feedback from U.S. Trustees, chapter 7 case trustees, and the Executive Office of U.S. Attorneys¹ indicated a preference for handwritten signatures affixed to original documents, rather than purely electronic signatures and an accompanying declaration, but recognized that scanned images of signatures may also be workable. They expressed concern about whether a debtor's declaration would be persuasive evidence that the debtor saw all of the relevant documents or knew which documents were covered by the declaration.

Dr. Johnson noted that a recent report issued at the request of the Office of Management and Budget, the General Services Administration, and Federal Chief Information Officers set forth the following five requirements for legally binding electronic signatures in federal organization transactions:

- 1) The signer must use an acceptable electronic form of signature.
- 2) The electronic form of signature must be executed or adopted by the signer with the intent to sign the electronic record (that is, to indicate approval of the information contained in the electronic record).
- 3) The electronic signature must be attached to or associated with the electronic record being signed.
- 4) There must be a means to identify and authenticate a particular person as the signer.
- 5) There must be a means to preserve the integrity of the signed record.²

¹ The Department of Justice's Executive Office for U.S. Attorneys ("EOUSA") was unwilling to provide written feedback concerning the possible options being considered, preferring instead to withhold its comments until a proposed rule is published. The report, however, contains some feedback that Dr. Johnson was able to gain through informal conversations with EOUSA staff.

² Office of Management and Budget, Use of Electronic Signatures in Federal Organization Transactions, Version 2.0 (Jan. 25, 2013).

The Subcommittee's Deliberations and Recommendation

During its conference call on December 28, 2012, the Subcommittee considered a preliminary version of Dr. Johnson's report and discussed possible options for a national rule that would eliminate retention requirements. Based on its discussions, the Subcommittee tentatively expressed support for a rule that would allow the scanned image of the signature of a debtor to be treated as a valid signature without the need for retention of the original hand-signed document by the court or the attorney.

At the January 2013 meeting of the Standing Committee, Judge Wedoff explained the approach that the Subcommittee was considering. No objections were raised to the continued consideration of a bankruptcy rule along these lines.

The Subcommittee continued its discussion of the treatment of electronic signatures during its conference call on February 26. It reviewed a draft of an amendment to Rule 5005 that would allow scanned signatures of debtors and other non-Filing Users to be treated the same as written signatures without requiring the retention of hard copies of documents. The amended rule would also provide that the user name and password of a registered user of the CM/ECF system would be treated as that individual's signature on electronically filed documents. Some members of the Subcommittee stressed the importance of requiring the scanned signature page to be filed along with the related document, so as to result in a single docket entry. It was noted that the validity of a signature submitted under the amended rule would still be subject to challenge, just as is true for a handwritten signature.

Following its discussions, **the Subcommittee voted to recommend that the Advisory Committee approve for publication the following amendments to Rule 5005.**

Rule 5005. Filing, Electronic Signatures, and Transmittal of Papers

1 (a) FILING and SIGNATURES.

2 (1) *Place of Filing.*

3 * * * * *

4 (2) *Filing by Electronic Means.* A court may by local rule permit
5 or require documents to be filed, signed, or verified by electronic means that are
6 consistent with technical standards, if any, that the Judicial Conference of the
7 United States establishes. A local rule may require filing by electronic means
8 only if reasonable exceptions are allowed. A document filed by electronic means
9 in compliance with a local rule constitutes a written paper for the purpose of
10 applying these rules, ~~the Federal Rules of Civil Procedure made applicable by~~
11 ~~these rules~~, and § 107 of the Code.

12 (3) *Signatures on Documents Filed by Electronic Means.*

13 (A) *The Signature of a Registered User.* The user name
14 and password of an individual who is registered to use the court's electronic filing
15 system shall serve as that individual's signature on any electronically filed
16 document. The signature may be used with the same force and effect as a written
17 signature for the purpose of applying these rules and for any other purpose for
18 which a signature is required in proceedings before the court.

19 (B) *Signature of Other Individuals.* When an individual
20 other than a registered user of the court's electronic filing system is required to
21 sign a document that is filed by electronic means, a scanned copy of the signature
22 page of the document bearing the individual's original signature may be

23 electronically filed with the document as part of a single electronic filing. For a
24 document filed in compliance with this rule, the original document bearing the
25 individual’s original signature need not be retained. A signature submitted in
26 compliance with this provision may be used with the same force and effect as the
27 signature on the original document for the purpose of applying these rules and for
28 any other purpose for which a signature is required in proceedings before the
29 court.

30 * * * * *

COMMITTEE NOTE

The rule is amended to address the treatment of electronic signatures in documents filed in connection with bankruptcy cases, a matter previously addressed only in local bankruptcy rules. New provisions are added that prescribe the circumstances under which electronic signatures may be treated in the same manner as original handwritten signatures without the need for anyone to retain paper documents with original signatures. The amended rule supersedes any conflicting local rules.

The title of the rule and subdivision (a) are amended to reflect the rule’s expanded scope. The reference to “the Federal Rules of Civil Procedure made applicable by these rules” in subdivision (a)(2) is stricken as unnecessary.

Subdivision (a)(3) is added to address the effect of signatures in documents that are electronically filed. Subparagraph (A) applies to persons who are registered users of a court’s electronic filing system. It adopts as a national rule the practice that previously existed in virtually all districts. The user name and password of an individual who is registered to use the CM/ECF system are treated as that person’s signature for all documents that are electronically filed. That signature may then be treated the same as a written signature for purposes of the Bankruptcy Rules and for any other purpose for which a signature is required in court proceedings.

Subparagraph (B) applies to the signatures of persons who are not registered users of the court’s electronic filing system. When the signature of a debtor or other individual who is not a registered user of CM/ECF is required on a document—such as a petition, schedule, or declaration—the document may be filed electronically along with a scanned image of the signature page bearing the individual’s handwritten signature. The document will then be stored

electronically by the court, with neither the court nor the filing attorney required to retain a paper copy. This amendment, which changes the practice that previously existed in many districts, was prompted by several concerns: the lack of uniformity of retention periods required by local rules, the burden placed on lawyers and courts to retain a large volume of paper, and potential conflicts of interest imposed on lawyers who were required to retain documents that could be used as evidence against their clients. If scanned signature pages are filed in accordance with this rule, the electronically filed signature may be treated the same as a written signature for purposes of the Bankruptcy Rules and for any other purpose for which a signature is required in court proceedings.

Just as the validity of a handwritten signature may be challenged in court proceedings, nothing in this rule prevents a challenge to the validity of an electronic signature filed in compliance the rule's provisions.

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APPENDIX 1

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Bankruptcy Court Rules and Procedures Regarding Electronic Signatures of Persons Other than Filing Attorneys

Report to the Subcommittee on Technology
and Cross Border Insolvency
of the Advisory Committee on
Rules of Bankruptcy Procedure

Molly T. Johnson
The Federal Judicial Center

REVISED

February 22, 2013

Executive Summary

At the request of the Advisory Committee, we collected and reviewed local bankruptcy rules regarding signatures of non-registrants of CM/ECF (e.g., debtors) and requirements for retention of documents bearing original handwritten (“wet”) signatures of non-registrants. We also reviewed district court rules regarding signatures and retention, reviewed an OMB document on the use of electronic signatures in federal transactions, and solicited the views of interested parties regarding potential rules changes in these areas.

Findings include:

- The vast majority of bankruptcy courts (85/93) require the filing attorney to retain hard copy documents bearing non-registrant’s signatures, although retention periods and the times from which they begin running vary widely;
- Of courts that do not require retention of hard copy documents, most require a declaration to be filed that is signed under penalty of perjury by the person whose signature is required on the documents, attesting to the truth and accuracy of information contained in those documents. Depending on the court, the declaration form is retained either by the filing attorney or the Clerk of Court. Other variations include whether the attorney must also sign the declaration; when the declaration is signed relative to the filing of the documents to which it refers; whether the declaration is retained in hard copy form or as a scanned image; and the exact attestations the signer makes in signing the declaration;
- Four courts do not require retention of hard copy documents (at least under some circumstances) and also do not have a declaration procedure.
- District courts generally have retention requirements in both civil and criminal cases. Our research did not reveal any district courts that allow a declaration to be filed without requiring retention of hard copies of signature-bearing documents.
- United States Trustees and Chapter 7 case trustees responding to our inquiry expressed concern about doing away with hard copy retention requirements because of difficulty that could cause with subsequent prosecutions. Some suggested, however, that requiring a scanned image of the relevant signature(s), as opposed to a purely electronic (“/s/Name”) signature would address that problem.
- Informal feedback from the Executive Office of U.S. Attorneys indicated that hard copy signatures are thought to serve an important evidentiary function, particularly in jury trials, in prosecutions for fraud or related crimes. Although hard copy signatures are preferable, a scanned image of a signature might be “workable.” Those responding expressed some concern about a declaration option, noting that having a signature on a declaration in lieu of the filed documents could leave ambiguity as to whether the signer saw all of the relevant documents or knew which ones were covered by the declaration.
- A number of federal agencies are also grappling with the issue of electronic signatures. In a report issued on January 25, 2013 (earlier versions of which were available in 2012) at the request of the Office of Management and Budget (OMB), the General Services Administration (GSA) and Federal Chief Information Officers (CIO) Council enumerated the following requirements for legally binding electronic signatures in federal organization transactions: 1) A person (i.e., the signer) must use an acceptable electronic **form of signature**; 2) the electronic form of signature must be executed or adopted by a person with

the **intent to sign** the electronic record; 3) the electronic form of **signature must be attached to or associated with the electronic record** being signed; 4) there must be a means to **identify and authenticate** a particular person as **the signer**; and 5) there must be a means to preserve the **integrity of the signed record** (emphases in original).

I. Introduction and Background

At the fall 2011 meeting of the Advisory Committee, the Subcommittee on Forms suggested that the Advisory Committee develop national rules regarding documents containing signatures of persons other than registered CM/ECF users (“non-registrants”). Specifically, such rules could govern the circumstances under which bankruptcy courts can accept documents electronically signed by non-registrants, and requirements for attorneys to retain documents containing the original (“wet”) signatures that correspond to the electronically-filed documents. The Model Rules addressing these issues leave much to the discretion of individual courts, and practices vary widely.¹ After discussion, the Advisory Committee Chair referred the issue to the Subcommittee on Technology and Cross-Border Insolvency (“Technology Subcommittee”) to consider potential rules changes relating to these issues.

There are important considerations both in support of and against requiring original handwritten signatures of non-registrants and requiring the attorneys to retain the hard copy documents with original signatures. The existence of a hard copy document bearing the original signature of a person attesting to the truth of information within the document has been seen as necessary to pursuing later criminal prosecutions based on fraud or other bankruptcy-related crimes. It also has been used as the basis for determining pivotal bankruptcy-related issues (e.g., challenges to a debtor’s ability to receive a discharge under 11 U.S.C. § 727(a)(4)(A) may be met with the claim that the debtor never signed the document providing the basis for the challenge, or did not sign the version of the document that was filed). On the other hand, this practice has raised concerns about attorneys being required to retain and produce documents that could ultimately incriminate their clients, and has also been seen as burdensome for attorneys in terms of storage capacity. The new forms produced by the Bankruptcy Forms Modernization Project will generally be longer when printed than the prior forms, increasing the potential storage burden on attorneys and law firms if retention of hard copies is required.

At the spring 2012 Advisory Committee meeting, the Technology Subcommittee recommended that a national rule be developed, and presented two options for consideration. One option would require that an electronically-filed document signed by someone other than the filer be accompanied by a separate declaration, bearing an original signature, in which the signer attests to the truth and validity of the information provided in the electronically-filed document. The court would retain the declaration in electronic form, and the filing attorney would not be required to retain the hard copy documents with original signatures. This procedure is similar to one currently in use in the U.S. Bankruptcy Court for the Northern District of Illinois.

The second option would amend the rules to provide that any petition or other document electronically filed and verified, signed, or subscribed in a manner that is consistent with technical standards that the Judicial Conference of the United States establishes must be treated for all purposes (including penalties for perjury) in the same manner as though signed or subscribed.

¹ See Memorandum from Elizabeth Gibson, Reporter, to the Subcommittee on Technology and Cross Border Insolvency re: Electronic Signatures of Persons Other Than Filing Attorneys (July 31, 2012) for a discussion of the Model Rule provisions.

Rather than engaging in a discussion of the merits of these two options, at the spring 2012 meeting the Advisory Committee, at the recommendation of the Technology Subcommittee, suggested that the Chair consult with the Chair of the Standing Committee to determine if other rules advisory committees should be involved in the consideration of these issues. After being consulted, the Standing Committee chair indicated that the Advisory Committee should proceed on its own at this point in determining whether to develop national bankruptcy rules on signatures and retention requirements. Thus, the matter was referred back to the Technology Subcommittee for consideration of specific potential national rules on this topic.

After discussion, the Technology Subcommittee determined that for several reasons the first option mentioned above – i.e., the “declaration” option – would likely be preferable to the second option. Before making a final recommendation, however, the Subcommittee asked the Federal Judicial Center to (1) gather information about procedures currently in place in the bankruptcy courts to deal with signature and retention issues, (2) obtain input from prosecutors and other interested parties about their experiences with different local procedures on these issues and about their views on potential rules changes, and (3) determine how district courts handle signature and retention issues.

The Advisory Committee learned after its fall 2012 meeting that the Judicial Conference Committee on Court Administration and Case Management (“CACM”) has also expressed preferences about national rules relating to signatures of non-registrants. In an August 20, 2012 letter to then-Standing Committee Chair Judge Mark Kravitz, Judge Julie Robinson, Chair of CACM, set forth recommendations from CACM regarding national rules on this issue. The Committee’s preferred approach would be to implement a national rule specifying that an electronic signature in the CM/ECF system is *prima facie* evidence of a valid signature. The second approach would require courts, rather than attorneys, to retain hard copies of documents bearing “wet” signatures of non-registrants. The third, and least-favored, approach mentioned by Judge Robinson was to establish national rules regarding retention periods for hard-copy documents, rather than leaving this to each court’s local rules.

The questions addressed in this report include:

- 1) How does each bankruptcy court currently handle electronic filing of documents bearing signatures of non-registrants?
- 2) For courts that require retention of documents bearing original signatures of non-registrants, who retains the documents, and for how long are they required to be retained?
- 3) How many courts require separate declarations to be signed and filed that attest to the truth of information in electronically-filed documents? How is the declaration procedure implemented in different courts?
- 4) How do district courts currently handle the issue of signatures of non-registrants?
- 5) What are the views of prosecutors, U.S. Trustees, and case trustees regarding potential rule changes concerning signatures of non-registrants and retention requirements?

An earlier version of this report was discussed by the Subcommittee in a conference call on December 28, 2012. During that call, members of the Subcommittee discussed various options for handling electronic signatures in bankruptcy cases, noting the need to balance the burden of requiring retention of hard copies against the loss of evidentiary power in subsequent prosecutions if the hard copies are not retained. At the conclusion of the call, the Subcommittee tentatively endorsed

the idea of requiring pages bearing the non-registered user's signature to be scanned, and having those scanned images filed along with the (electronic) documents to which they relate.

At the January 3rd meeting of the Judicial Conference Standing Committee on Rules of Practice and Procedure, Judge Wedoff, Chair of the Advisory Committee on Bankruptcy Rules, summarized the information reviewed by the Subcommittee and the direction favored by the Subcommittee at this point. The Standing Committee did not provide any specific direction or feedback.

II. Local Bankruptcy Court Rules on Signatures and Retention

To determine how each bankruptcy court addresses signatures of non-registrants and retention requirements, we searched court websites to find the local rules or procedures that address these issues. When the relevant procedures could not be found on the website, or where provisions were unclear, we contacted the Clerk of Court's office for information. The table in Appendix A (p. 18) summarizes the provisions in each court.²

According to our website search, more than one-third of the bankruptcy courts (38) have provisions on these issues both in a local bankruptcy rule (normally either L.B.R. 5005 or 9011) and in an Administrative Procedures document, General Order, or other non-rules mechanism. The rest of the courts that address these issues use only a local rule (26 courts) or only one of the non-rules-based approaches (29). About one-quarter of the courts had local forms to implement some of the procedures, particularly those requiring a signed and filed declaration in which the non-registrant attests to the truth and validity of electronically-filed documents (see discussion below).

a. Retention Requirements for Original Signatures

Almost all bankruptcy courts (85) require the filing attorney to retain documents with original signatures of non-registrants for a specified period of time. In fifty-seven courts, the retention period runs from the time the case is closed; in eight courts it runs from the time the appeals period ends³; and in nine courts the period runs from the later of case closing or the appeals period. Three courts run the retention period from the time of filing, and three do not specify when the retention period begins. The remaining courts that have a retention period (5) use a combination of time periods, such as 5 years from filing or the completion of appeals, whichever is later (Nevada). The bankruptcy courts that do not specify any retention period are Pennsylvania-Middle;

² All bankruptcy courts had their local rules on the court's website. It is possible some courts had administrative procedures or other non-rules documents that were not on the website, but we were able to find provisions covering electronic signatures of non-registrants and retention issues for each court, either on the website or through communication with the Clerk of Court's office.

³ Most courts that specify the appeals period in their retention requirements refer to the expiration of the maximum allowable time for appeals.

Tennessee-Middle; Illinois-Northern; Minnesota; Alaska; New Hampshire; New Mexico; and Wisconsin-Western.⁴

The most frequent retention period (used in 29 courts), irrespective of the triggering event, is 5 years, corresponding to the statute of limitations for bankruptcy fraud. The next-most-frequent retention periods are 2 years (16 courts), 1 year (11 courts), and 3 years (10 courts). The range of retention periods is from 0 years (e.g., retention only required until the case is closed) to 7 years.

In courts with retention requirements, generally the filing attorney must retain hard copies of the signature-bearing documents; however, a few courts with retention requirements do not require the retention to be of hard copy documents. For example, in the Eastern District of Wisconsin, as an alternative to retaining a hard copy of a signed document, the filer may have the original document scanned, digitized, and stored electronically if a form Verification of Signature and Designation of Electronic Counterpart as Original is signed and filed.⁵ In Hawaii, Local Bankruptcy Rule 5005(4)(f) provides that in lieu of an originally signed document, an ECF User “may produce the document’s scanned image with the digital file’s ‘date modified’ information attached.” Both the Eastern District of Washington and the Eastern District of Virginia allow the filer to retain either a hard copy of the signed document or a copy made “in the ordinary course of business.”⁶

In a small number of courts, the retention requirement applies only in certain circumstances. For example, in the Eastern District of California, retention is required only if the filed document contains an “/s/Name” signature form or a software-generated signature rather than a scanned original signature.⁷

Courts that require signed documents to be retained universally put the burden of retention on the filing attorney. Where a court allows a declaration to be retained in lieu of retention of the signed original documents, sometimes the filing attorney retains the declaration form, and sometimes the Clerk’s Office retains it (see discussion of declaration procedures below).

b. Declaration Procedures

As mentioned in the introduction to this report, the Technology Subcommittee expressed an initial preference for developing a national rule that would allow bankruptcy courts to accept a signed declaration attesting to the truth of the information in documents filed and signed by the debtor or other non-registrant, but requested more information about declaration procedures currently in existence.

Our review of local bankruptcy rules indicates that thirty-two bankruptcy courts require a declaration to be signed by the debtor under penalty of perjury, attesting to the truth of information contained in documents filed at the beginning of a bankruptcy case. Twenty-five of these courts have

⁴ Although Wisconsin-Western does not specify a retention requirement or time period, the Administrative Procedures for the court indicate that, upon request, original signed documents must be provided, and that “for evidentiary purposes the parties are encouraged to retain the original documents in their records.”

⁵ L.R. 5005.1(b) (U.S. Bankruptcy Court, Eastern District of Wisconsin).

⁶ L.B.R. 5005-3(f)(2)(B) (U.S. Bankruptcy Court for the Eastern District of Washington); CM/ECF Policy 7(A) (U.S. Bankruptcy Court for the Eastern District of Virginia).

⁷ L.B.R. 9004-1 (U.S. Bankruptcy Court for the Eastern District of California).

the attorney file a signed declaration *in addition to* requiring retention of hard copy documents; the remaining seven courts accept the signed declaration without requiring the attorney to retain the original signed documents. Provisions about declarations, and the declaration forms themselves, vary along the following dimensions: whether they are signed only by the debtor (non-registrant) or also by the filing attorney; what the debtor (and attorney, if applicable) is attesting to; when the declaration must be signed relative to the filing of the related documents; the form in which the declaration is transmitted to the court (e.g., scanned image vs. hard copy); and the documents to which the declaration form relates (e.g., many courts have separate declaration forms for the petition and accompanying schedules and statements vs. documents filed later in the case).

1. Declaration filed in addition to retention of hard copy documents

Of the courts that require a signed declaration to be filed in addition to requiring attorneys to retain hard copies of the documents bearing original signatures of non-registrants, some require the declaration to be filed in hard copy format (e.g., all of the Texas bankruptcy districts; Arizona; Michigan-Western; Virgin Islands), while others allow the declaration to be filed as an imaged document (e.g., Massachusetts; Louisiana-Western). Some of the districts provide that the Clerk of Court's office will retain the filed declaration (e.g., the Texas bankruptcy districts; Illinois-Northern; Louisiana-Middle), while others require the filing attorney to retain the original declaration form in addition to the originals of other filed documents (e.g., Massachusetts; Nevada). For more information on each court's procedures, see Appendix A.

Our research indicated that at least two bankruptcy courts, Colorado and Vermont, previously required a declaration form to be filed in addition to having attorneys retain the documents, but have changed their procedures to no longer require the declaration form to be filed. Bradford Bolton, Clerk of the U.S. Bankruptcy Court for the District of Colorado, explained the court's decision to do away with the declaration requirement as follows:

We found that it was a lot of extra effort for minimal benefit to accept and scan the original paper Form 21 Declaration when counsel was already required to retain the forms with wet signatures in their offices for two years. Mr. Greg Garvin, Assistant U.S. Trustee for Colorado, advised that after doing some discovery with likely ignorers of the rules, his office concluded that there were very few occasions (one or two) where counsel could not locate the debtor's original signature. As a result of Mr. Garvin's inquiries, attorneys began paying more attention to the rule and he was not concerned that there was not a duplicate signature in the court records.

We believe that it would be a burdensome, duplicative and unproductive step backwards to require filing or submission of the Form 21 Declarations with the Court. In addition, the judges concluded that it would demonstrate a fundamental distrust of attorneys following the rules of document retention. Going forward, the reduction of future appropriations forces the court to continue to find ways of eliminating work with questionable necessity or benefit in promoting effective case administration and dispute resolution. Eliminating filing and storage of the Form 21 Declaration was one of many changes we initiated, and continue to initiate, in an effort to work smarter and save our resources for more critical priorities.⁸

Thomas Hart, Clerk of the U.S. Bankruptcy Court for the District of Vermont, provided this explanation for the court's decision to drop the declaration requirement as follows:

We initially enacted the rule requiring Declarations regarding Electronic Filings ("DREFs") primarily to create a record that would help with fraud prosecutions and we did not anticipate imposing this requirement would be a significant burden on the bar. At the time of the recent rule revision, we verified that neither the US Trustee

⁸ Personal communication via email from Bradford Bolton to Molly Johnson, December 10, 2012.

nor the US Attorney had actually used the DREFs in any fraud prosecutions, and also determined that it was a significant burden to debtors' attorneys to obtain and file the DREFs. So, on balance the court decided there was not a compelling reason to continue to impose this burden on the debtors' bar, that the DREFs were not accomplishing the intended goal, and there are sufficient other safeguards in place to limit, detect and prosecute any fraud arising from electronic filings.⁹

Conversely, the U.S. Bankruptcy Court for the Eastern District of Louisiana does not have a declaration requirement under its current local rules, but proposed new Local Rule 1008 requires the filing of a declaration form, which would be maintained by the Clerk of Court's office in hard copy form.¹⁰

2. Declaration filed with no requirement for attorney to retain signed hard copy documents

Because so few bankruptcy courts have no retention requirement in conjunction with their declaration provision, and because this procedure is specifically of interest to the Subcommittee, we will describe here each district's provisions. The full provisions for these courts and any related forms can be found in Appendix B (p. 41).

District of Alaska. For all petitions, lists, schedules, and statements requiring the signature of the debtor(s) that are filed electronically, Local Bankruptcy Rule 5005-4(c)(2) requires that the filing attorney prepare and file a Declaration Re: Electronic Filing, bearing the original signature(s) of the debtor(s) and debtors' attorney(s). The declaration must be signed before the petition is filed, and filed conventionally with the court within 14 days of the electronic filing of the petition. The declaration is signed under penalty of perjury, and in it the debtor declares that the information given to the attorney is true and correct and that the debtor consents to the attorney sending the documents to the bankruptcy court electronically.

District of Minnesota. Pursuant to Local Bankruptcy Rule 9011(4)(d), when an original signature of a debtor, joint debtor, or authorized individual is required on a document, Filing Users can either submit the electronic document with a scanned image of the signature page signed by the debtor(s), or a scanned image of the Form ERS Signature Declaration. The Signature Declaration is signed under penalty of perjury, and declares that the person signing the declaration has provided true and correct information to the attorney; that the information provided in the "Debtor Information Pages" submitted when the case is commenced electronically is true and correct; that if no social security number is provided, it is because the debtor doesn't have one; and that the debtor consents to the attorney electronically filing the documents together with a scanned image of the Signature Declaration.

District of New Hampshire. According to Administrative Order 5005-4(d)(3), when a document is electronically filed that contains an original signature under oath, other than that of the Filing User, a paper copy of the court's form Declaration of Electronic Filing must be submitted to the Court within 7 days. The declaration must be signed under oath and have an attached copy of the

⁹ Personal communication via email from Thomas Hart to Molly Johnson, December 18, 2012.

¹⁰ Proposed new Local Rule 1008-1 (U.S. Bankruptcy Court for the Eastern District of Louisiana); personal communication via email from Brian Richoux, Clerk of the U.S. Bankruptcy Court for the Eastern District of Louisiana, December 10, 2012.

Notice of Electronic Filing for the document to which it refers, including the electronic document stamp. The clerk retains all Declarations of Electronic Filing that are submitted to the court “as part of the clerk’s duty to maintain records.” The declaration form is signed by both the petitioner and the attorney. In it, the petitioner declares under penalty of perjury, among other things, that the information he or she gave the attorney and other information contained in the petition, statements and schedules, or amendments thereof is true and correct to the best of petitioner’s belief. The attorney signing the declaration certifies that the debtor signed the declaration and authorized the attorney to file the petition and schedules, that the attorney gave the debtor a copy of the petition and schedules being electronically filed, and that the petition and schedules identified in the accompanying Notice of Electronic Filing fully and accurately reflect the information given to the attorney by the Debtor. Failure to file the signed original of the declaration is grounds for dismissal of the case.

District of New Mexico. Local Rule 5005-4.2 provides that “Any paper physically signed, and filed electronically or filed in paper form, and thereafter converted to an electronic document by the clerk, has the same force and effect as if the individual signed a copy of the paper. Verified papers signed electronically shall be treated for all purposes (both civil and criminal, including penalties for perjury) as if they had been physically signed or subscribed.” In addition, Local Rule 9011-2 provides that “The Court will treat a duplicate signature as an original signature.” The district has separate declaration/signature forms for the Petition and for Schedules and the Statement of Financial Affairs filed after the petition. For any other subsequent filings requiring a verified signature, the filing attorney must craft his/her own signature page, or prepare a form Debtor’s Unsworn Declaration Under Penalty of Perjury.

Northern District of Illinois. Section II.C. of the Administrative Procedures for the Case Management/Electronic Case Filing System for the U.S. Bankruptcy Court for the Northern District of Illinois provides that when a bankruptcy petition is filed electronically, it must be accompanied by a form Declaration Regarding Electronic Filing. The declaration must contain the original signature of the person whose signature is required on the document to which the declaration relates, and must be submitted in a form that can be accurately scanned. The declaration forms serve “as the required signature(s) on the petition and all other documents filed contemporaneously with the petition that must be signed by the debtor(s) or the representative of a non-individual debtor.” A similar declaration is required for documents filed after the petition that require signatures of non-filers.

Northern District of West Virginia. The Local Bankruptcy Rules for the Northern District of West Virginia provide different options for handling the issue of signatures of non-registered CM/ECF Users. One option is for the filing user to submit a scanned PDF showing the actual signature(s) of those executing the document. When this option is used, there is apparently no retention requirement for the filing attorney. The second option, in the case of documents signed by a debtor, is for the debtor’s attorney to retain an original signed copy of the court’s form Declaration Re: Electronic Filing for a period of 7 years from the date it was filed. Local Bankruptcy Rule 5005-4.08 provides that “The existence of a scanned pdf signature or a properly executed Declaration Re: Electronic Filing ...and debtor’s testimony at the Section 341 meeting of creditors are prima facie evidence of the existence, authenticity, and validity of the signatures on the original petition, schedules, and statement of affairs.”

The declaration form for West Virginia-Northern is signed by both the petitioner and his or her attorney. The petitioner declares that he or she consents to the electronic filing; acknowledges

having reviewed the information in the petition and schedules; and under penalty of perjury, declares that that information is correct. The attorney declares that the petitioner signed the declaration before the petition and other documents were filed.

Eastern District of Wisconsin. Under Local Bankruptcy Rule 5005.1, as an alternative to retaining hard copy documents for 5 years, the filer may have the original document, including any original signature, scanned and digitized, with the 5-year retention period then applied to the scanned document rather than the original. The scanned document is deemed a counterpart that is intended by the person executing it to have the same effect as an original if that person signs and files in the case a Verification of Signature and Designation of Electronic Counterpart as Original. This document is signed by the debtor(s) under penalty of perjury and declares that any documents executed or issued by the signer and maintained by the filer in electronic format are intended to be a counterpart and have the same effect as an original pursuant to Fed.R.Evidence 1001(3).

c. Courts with no declaration procedure or retention requirements

Four bankruptcy courts – the Eastern District of California, the Middle District of Pennsylvania, the Middle District of Tennessee, and the District of Columbia – have at least some situations in which they do not require retention of hard copy documents and also do not require a signed declaration to be filed.

Eastern District of California. Under Local Bankruptcy Rule 9004-1(c), retention of hard copy documents is required only if an “/s/Name” or software-generated electronic signature is used. Retention is apparently not required if the filer submits a scanned copy of the originally-signed document or a scanned copy of the signature page.

Middle District of Pennsylvania. The Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means do not mention a retention requirement and do not provide a declaration procedure. Clerk of Court Terry Miller confirmed that neither of these requirements exists in the court. He speculated that perhaps these were seen as unnecessary because the malpractice insurance companies might require attorneys to retain hard copies of signature-bearing documents, but this has not been verified.

Middle District of Tennessee. Clerk of Court Matt Loughney confirmed that the court is “silent” on the document-retention issue, even though the local United States Trustee’s office has asked for such a requirement. When asked if there had ever been problems with respect to prosecutions, he relayed this story:

In the one case with a signature issue there was never any criminal referral. The debtor claimed he never signed his bankruptcy schedules and thus was not responsible for “failing” to disclose an asset. The attorney produced a blanket release signed by the debtor that said he was giving the attorney permission [to] file anything on his behalf. The judge agreed with the attorney and found the debtor did fail to disclose and revoked the discharge.¹¹

¹¹ Personal communication via email from Matt Loughney to Molly T. Johnson, December 10, 2012.

District of Columbia. Under the Court's Administrative Procedures for CM/ECF, §II.B.4, the five-year retention requirement does not apply to a document that is filed with a scanned image of the original signature.

III. Local District Court Rules on Signatures and Retention¹²

During the Advisory Committee's discussion of the signature and retention issue at the September 2012 meeting, a question was raised about how district courts handle these issues when documents are filed electronically. To answer this question, we reviewed district court provisions for electronic filing of both civil and criminal cases. Appendix C (p. 57) contains a table summarizing each district's provisions.

The majority of district courts have a rule that applies the same procedures to the filing of documents with signatures of non-filing CM/ECF Users in both civil and criminal cases. Virtually all districts require retention of original documents bearing wet signatures of non-filing users¹³, and generally the filing attorney is the one who must retain the documents. For documents filed in criminal cases only, several districts require the U.S. Attorney's Office to retain the original document. Other districts require certain documents, particularly those filed in criminal cases, to be retained by the Clerk's Office.

As with bankruptcy courts, the length of the required retention period, and the time from which it begins running, vary widely across district courts. The length of retention periods ranges from 35 days to six years, and most district procedures begin the retention period at the expiration of the appeal period or following final resolution of the case.

Our research did not reveal any district court procedures similar to the signature declaration form used in the U.S. Bankruptcy Court for the Northern District of Illinois and under consideration by the Subcommittee.

IV. Opinions on Alternative National Approaches to Signature and Retention Requirements in Bankruptcy Cases

The primary rationale for requiring attorneys to retain hard copies of documents bearing original signatures is to preserve evidence for any subsequent criminal prosecutions involving bankruptcy fraud or other bankruptcy-related crimes. To further inform the Subcommittee about implications of changing the national rules on these issues, we solicited input from the Executive Office of U.S. Attorneys, the Executive Office of U.S. Trustees, and the National Association of Bankruptcy Trustees, a national organization for Chapter 7 trustees.

¹² Marie Leary, Research Associate at the Federal Judicial Center, conducted the research and analysis for this section.

¹³ The only minor exception is found in the Eastern District of Wisconsin's Electronic Case Filing Policies and Procedures Manual, Section II.C.2.b, which provides that if the original document contains the signature of a criminal defendant, a third-party custodian, a United States Marshal, an officer from the U.S. Probation Office, or some other federal officer or agent, then the Clerk of Court's office will scan the document, upload it into ECF, and dispose of the hard copy.

In our outreach to these groups, we asked for their opinions of several alternative ways in which the national rules could address signature and retention issues. The options presented included some previously considered by this Subcommittee as well as options that were endorsed by CACM in its letter to the Standing Committee Chair. The following are the alternatives on which we asked for input:

A: Adopt a national rule specifying that an electronic signature of a non-registered user in the CM/ECF system is *prima facie* evidence of a valid signature. Under this proposal, the original document with a manual (“wet”) signature would not have to be retained, and persons challenging the validity of a signature would have the burden of proving that the signature was not valid.

B: Adopt a national rule requiring that courts, rather than attorneys, retain copies of all originally-signed paper documents that are filed electronically.

C: Adopt a national rule requiring that the petitioner or other non-registered user who has signed a document file a one-page Declaration, under penalty of perjury, that (1) the information he/she has given to the filing attorney is true and correct; (2) petitioner (or other signer) has reviewed the documents being filed that bear his/her signature; and (3) the documents are true and correct. The signed original of the Declaration would be filed with the Clerk’s Office. The Clerk’s Office would retain the original Declaration (Option C1) or scan the Declaration and discard the hard copy (Option C2). Under either of these options, the filing attorney is not required to retain hard copies of the signed documents or the Declaration.

D: Adopt a national rule specifying the retention period for hard copy documents with manual signatures. Under this option, attorneys would continue to retain signed documents, but the retention period would be consistent across districts.

In addition to soliciting general reactions to these proposals, we also asked each group to share any experiences they had with bankruptcy cases, especially fraud prosecutions, in districts that had a version of that procedure.

a. Feedback from Executive Office of U.S. Attorneys

Staff at the Executive Office of U.S Attorneys sent our inquiry regarding the various electronic signature options to bankruptcy fraud prosecutors, and also tried to solicit input from others within the Department of Justice who prosecute fraud and related criminal cases. Because of the small number of responses received and other considerations, EOUSA declined to provide written input. However, we were able to obtain some feedback through informal conversations with staff. Because of the limited number of people on which this feedback is based, it should not be taken as representative of the views of federal prosecutors in general.

According to EOUSA staff, prosecutors who responded to our inquiry expressed a strong preference that debtors be required to affix handwritten signatures to all documents. While a paper original of the signature is considered best from an evidentiary standpoint, a scanned image of the handwritten signature was seen as potentially “workable.” One issue raised was whether handwriting experts can perform analysis on scanned signatures, but this was not seen as the only way to surmount the evidentiary hurdle of proving someone actually signed a document in question. If case trustees check signatures at a 341 meeting, for example, their testimony could be an indicator of the reliability of a signature.

The prosecutors responding to our inquiry indicated they would be opposed to a rule that relied on an electronic “system” (e.g., a PIN number) as the signature. This would be particularly problematic in jury trials, because many jurors would not have experience with this type of electronic verification. It was seen as reasonable to put the burden on debtor’s counsel to scan handwritten signatures and file the scanned signature pages with the related electronic documents.

With respect to the “Declaration” option under consideration by the Subcommittee, prosecutors raised the concern that this procedure is vulnerable to the assertion that the Declarant was not clear about which documents were covered by the Declaration or did not see all of the referenced documents. Staff members with whom we spoke in the EOUSA were unable to uncover any instances of bankruptcy fraud prosecutions that had taken place in districts with the Declaration procedure in place with no hard copy retention requirement, so there is no record on how difficult it is to establish these issues.

b. Feedback from Executive Office of U.S. Trustees

Lisa Tracy of the Executive Office for United States Trustees solicited input from each regional United States Trustee regarding potential national rules changes and any experience they had with wet signature issues in their respective local practices. In this section we summarize the feedback she received; her complete memorandum to us, including a table of potential rules change options preferred by her respondents, can be found in Appendix D (p. 83).

Overall, of the 18 U.S. Trustees responding to the inquiry, 15 indicated that Option “D” (a national rule setting a uniform retention period for documents with wet signatures) was their first preference, and for the remaining three it was their second preference. Two respondents favored Option “B” (requiring courts, rather than attorneys, to retain the documents bearing wet signatures), and one favored Option “A” (a rule stating that an electronic signature was prima facie evidence of a valid signature). Three respondents indicated that their second-most-favored option was “C” (the Declaration option). A table of all ranked responses can be found at the end of Appendix D.

In explaining their support for the alternative involving adoption of a national rule specifying the retention period for documents with wet signatures of non-registrants, several U.S. Trustees suggested that this would be the least disruptive alternative, since most courts already have retention requirements in place. Those who supported this alternative also indicated that the requiring hard copies to be retained significantly advances their mandate to prevent fraud and abuse in the bankruptcy system. Some of the U.S. Trustees who favored this approach also thought it would be helpful to require non-registrants, especially those appearing pro se, to electronically submit a scanned pdf copy of the original signature page of a filed document.

The U.S. Trustees responding to Ms. Tracy’s inquiry expressed concern about proposed alternatives that would not require retention of hard copy documents bearing “hand” signatures, whether wet (original) or a copy. Specifically, their concern was that without such signatures, criminal prosecutors might not have enough evidence to prosecute cases of bankruptcy fraud or other bankruptcy-related crimes. Some U.S. Trustees reported anecdotally that in some jurisdictions prosecutors will decline to prosecute cases in which documents with a party’s hand signature are unavailable.

Some U.S. Trustees also expressed the concern that, in the absence of a requirement for documents with a party's hand signature to be retained, they could be compromised in their ability to combat abusive conduct in bankruptcy cases. For example, they reported that in some cases challenges to a debtor's ability to receive a discharge under 11 U.S.C. §727(a)(4)(A) have been met with the claim that the debtor never signed the document providing the basis for the challenge, or signed a different version of the document. Such claims are much more difficult to refute in the absence of the signed document.

c. Feedback from National Association of Bankruptcy Trustees (NABT)

Raymond Obuchowski, Esq. distributed our inquiry to the full membership of the National Association of Bankruptcy Trustees (NABT), an organization of Chapter 7 trustees. We received responses from seven trustees. Their full responses are set forth in Appendix E (p. 87), and summarized here. Because of the small number of responses, they probably should not be interpreted as representative of the full membership.

Three trustees indicated that they favored some form of the declaration option; all three of those who did are from districts that have a declaration procedure (Illinois-Northern; Minnesota; and Massachusetts). Others, however, pointed out problems with the declaration option. Two indicated that some attorneys have debtors sign the declaration form before the petition and other documents are prepared, sometimes even at the first meeting. They also noted instances where a declaration was filed with no date on it.

None of the responding trustees endorsed option "A," under which an electronic signature is considered prima facie evidence of a valid signature. They mentioned instances in which attorneys fail to have their clients review documents that have been prepared. If a debtor did not agree to having his or her electronic signature put on a document, he or she has no way of proving that the signature is not valid. As one responding trustee said:

"Unfortunately, there is an attorney in my district [who] does not think his clients need to review the petition, schedules, financial affairs before filing and sign these documents with a wet signature. I have reported his practice to the US Trustee with proof. If no retention is required, you will be telling this attorney that his practice of not having his clients review and sign documents is OK."

From the other side, as one trustee pointed out, requiring original signatures from debtors makes it more difficult for them to claim that their attorney put erroneous information in the petition or other documents without their knowledge.

Several of the responding trustees made suggestions about other possible rules changes, including:

- Have all wet signature pages scanned and e-filed, with a national retention period for the wet signatures (e.g., 3 years);
- Require debtors to initial every page of the petition (including amendments) before filing, without requiring hard copy retention;

- Allow a scanned digital copy of the petition and other signed documents to be filed, without a retention requirement (“it’s highly unlikely that attorneys will forge their client’s signatures”);
- Allow any retained document to be a scanned copy with a blue ink signature (the trustee who suggested this accepts these at 341 meetings);

V. OMB Report on Use of Electronic Signatures in Federal Organization Transactions

On January 25, 2013, the General Services Administration and the Federal Chief Information Officers (CIO) Council published Version 2.0 of a report entitled “The Use of Electronic Signatures in Federal Organization Transactions,” which had been requested by the Office of Management and Budget (OMB).¹⁴ This document focuses on the use of electronic signatures for legal signing purposes in the context of electronic transactions. It provides guidance to federal organizations regarding electronic signatures, and particularly compliance of such signatures with the Government Paperwork Elimination Act of 1998 (GPEA), the Electronic Records and Signatures in Global and National Commerce Act (E-SIGN), and the Uniform Electronic Transactions Act (UETA).

Based on the above-mentioned statutes and applicable evidentiary requirements for admissibility, the report’s authors concluded that “creating a valid and enforceable signature requires satisfying the following signing requirements”:

- 1) A person (i.e., the signer) must use an acceptable electronic **form of signature**;
- 2) The electronic form of signature must be executed or adopted by a person with the *intent to sign* the electronic record (e.g., to indicate a person’s approval of the information contained in the electronic record);
- 3) The electronic form of *signature must be attached to or associated with the electronic record* being signed;
- 4) There must be a means to *identify and authenticate* a particular person as *the signer*; and
- 5) There must be a means to preserve the *integrity of the signed record*.¹⁵

The report provides more detail about various ways in which each of these requirements could be implemented. While the OMB report is not binding on federal organizations, its recommendations appear to be relied upon by at least some agencies. For example, on January 22, 2013, the Internal Revenue Service issued an announcement seeking recommendations for electronic signature standards, and proposed that any recommendations include the above-noted “core signing requirements.”¹⁶

¹⁴ The report is available at the following link:

http://www.idmanagement.gov/documents/Use_of_ESignatures_in_Federal_Agency_Transactions_v20_20130125.pdf

¹⁵ Office of Management and Budget, Use of Electronic Signatures in Federal Organization Transactions, Version 2.0 (January 25, 2013) (emphases in original).

¹⁶ Internal Revenue Service Announcement 2013-8 (January 22, 2013).

VI. Conclusion

The vast majority of courts, both bankruptcy and district, currently requires attorneys to retain hard copies of documents bearing original signatures of non-registrants of CM/ECF. Any rules change that does away with such requirements would alter current practice significantly. Given the input from prosecutors, U.S. Trustees and case trustees, it is possible that requiring a scanned image to be retained, rather than a “wet” or hard copy signature, would be more palatable to many, and would take advantage of some of the benefits of current technology. If the Subcommittee proceeds with developing a proposal for submission of a declaration in lieu of retaining hard copies, specific provisions to include within the proposal concern: whether the declaration form is retained by the filing attorney or the Clerk of Court; whether the declaration is retained in hard copy form or as a scanned image; when the declaration is signed relative to the filing of the documents to which it refers; whether the attorney must also sign the declaration; and the exact attestations the signer makes in signing the declaration.

APPENDIX A¹⁷

**Local Bankruptcy Court Procedures on Signatures
of Non-Filing Users of CM/ECF and Retention of Signed Documents**

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
1st Circuit				
Maine Administrative Procedures for Filing, Signing, Maintaining, and Verifying Pleadings and Other Documents in the ECF System	2 years after close of case or expiration of appeals period, whichever is later	Attorney (filer)	No	
Massachusetts Electronic Filing Rules, Rule 7; MLBR Official Local Form 7	5 years after close of case	Attorney retains signed documents and declaration	Yes	Filed as an imaged document; valid for all subsequently-filed documents requiring a signature in the case.
New Hampshire A.O. 5005-4(d)(3) L.B.F. 5005-4A L.B.F. 5005-4B	None	Clerk of Court retains hard copy Declaration	Yes	Paper copy of declaration filed within 7 days of associated document; must attach copy of Notice of Electronic Filing with electronic document stamp

¹⁷ Tae Kim, student intern at the Federal Judicial Center, assisted with the research for this appendix.

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Puerto Rico Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means	2 years after closing of case, unless court orders otherwise	Attorney (filer)	No	
Rhode Island L.B.R. 5005-4(j)	2 years after case is closed	Attorney (filer)	No	
2nd Circuit				
Connecticut Standing Order No. 7; Administrative Procedures for Electronic Case Filing	5 years after conclusion of case	Attorney (filer)	No	
New York- Eastern Administrative Procedures for Electronically Filed Cases	2 years after entry of final order terminating case	Attorney (filer)	No	
New York- Northern Administrative Procedures for Filing, Signing, and Verifying Documents §III	2 years after closing of case and expiration of appeals period unless court orders otherwise	Attorney (filer)	No	
New York – Southern In Re Electronic Means for filing, signing, and verifying documents, Exhibit 1	Later of 2 years or entry of final order terminating case or proceeding	Attorney (filer)	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
New York – Western Amended Administrative Procedures for filing, signing, and verifying pleadings and papers electronically	Not less than 5 years after closing of case	Attorney (registered user)	No	
Vermont L.B.R. 1002-1; L.B.R. 9011-1(b) L.B.R. 9011-2(b)	5 years	Attorney or pro se party (all documents requiring original signature)	No ¹⁸	
3rd Circuit				
Delaware L.R. 5005-4	Not less than 2 years from closure or case or proceeding unless otherwise ordered	Attorney (CM/ECF user)	No	
New Jersey L.B.R. 5005-1 Administrative Procedures for Filing, Signing and Verifying Documents by Electronic Means	7 years from dates of closure of case or proceeding in which document is filed	Attorney (“Participant”)	No	
Pennsylvania-Eastern L.B.R. 5005 Standing Order MO3-3005 re: Electronic Case Filing (April 1, 2003)	3 years after the main case is closed	Attorney (filing user)	No	

¹⁸ Vermont formerly had a Declaration requirement, but new local rules effective as of October 15, 2012 have omitted this procedure.

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Pennsylvania-Middle L.B.R. 5005-4 Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means.	None specified	N/A	No	
Pennsylvania-Western L.B.R. 5005-7, 5005-15 L.B.F. 1A	Six years from date of case closing	Attorney (Filing User)	Yes	Declaration (Form 1A) filed within 14 days of electronic filing of petition. Certifies that information given to attorney is true and correct. Original executed paper version is filed.
Virgin Islands L.B.R. 5005-1 ECF Procedure #7 L.B.F. 1 and 1A	Six years from date of filing	Attorney (Filing User)	Yes	Declaration (Form 1 or 1A) filed within 15 days of electronic filing of petition. Certifies that information given to attorney is true and correct. Original executed paper version is filed.
4th Circuit				
Maryland L.B.R. 5005-1 L.B.R. 9011-2, 9011-3; Administrative Order 03-02 §9	Three years after case is closed	Attorney or other person responsible for electronic transmission to court	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
North Carolina – Eastern L.B.R. 5005-4(7)	Four years after closing of case or proceeding in which document was filed	Attorney (Filing User)	No	
North Carolina – Middle L.B.R. 5005-4(7)	Four years after closing of case or proceeding in which document was filed	Attorney (Filing User)	No	
North Carolina – Western L.B.R. 5005-1(g)	Four years after case is closed	Attorney	No	
South Carolina Operating Order 08-07 – Guidelines for the Filing of Documents	Until case or adversary proceeding is closed and appeals time has expired; if case is dismissed, for 3 years	Attorney or (if no attorney) party originating document	No	
Virginia- Eastern L.B.R. 5005-2 CM/ECF Policy Statement	3 years after closing of case	Attorney (User); may retain imaged copy in lieu of original if does this in ordinary course of business	No	
Virginia- Western L.B.R. 5005-4	3 years after case dismissal or closing, unless otherwise ordered	Attorney (User)	No	
West Virginia – Northern L.B.R. 5005-4.08 L.B.R. 5005-4.09; G.O. 12-01	If electronic (typed) signature is filed, hard copies must be retained until the later of final case disposition or expiration of statute of lms.	Attorney	Yes, if documents with signatures submitted in electronic form other than scanned PDF	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
West Virginia – Southern Administrative Procedures for Electronic Filing	No less than one year from closing of case	Attorney (Registered Filer)	No	
5th Circuit				
Texas – Eastern Appendix 5005 Administrative Procedures for the Filing, Signing and Verifying of Documents by Electronic Means in Texas Bankruptcy Courts	5 years after closing of case or adversary proceeding, unless otherwise ordered by court	Clerk of Court retains paper copy of Declaration; Attorney (Electronic Filer) retains documents bearing original signatures	Yes	Declaration filed in paper format within 5 days of electronically-filed document
Texas – Northern Administrative Procedures for the Filing, Signing and Verifying of Documents by Electronic Means in Texas Bankruptcy Courts	5 years after closing of case or adversary proceeding, unless otherwise ordered by court	Clerk of Court retains paper copy of Declaration; Attorney (Electronic Filer) retains documents bearing original signatures	Yes	Declaration filed in paper format within 5 days of electronically-filed document
Texas-Southern Administrative Procedures for the Filing, Signing and Verifying of Documents by Electronic Means in Texas Bankruptcy Courts	5 years after closing of case or adversary proceeding, unless otherwise ordered by court	Clerk of Court retains paper copy of Declaration; Attorney (Electronic Filer) retains documents bearing original signatures	Yes	Declaration filed in paper format within 5 days of electronically-filed document

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Texas-Western Administrative Procedures for the Filing, Signing and Verifying of Documents by Electronic Means in Texas Bankruptcy Courts	5 years after closing of case or adversary proceeding, unless otherwise ordered by court	Clerk of Court retains paper copy of Declaration; Attorney (Electronic Filer) retains documents bearing original signatures	Yes	Declaration filed in paper format within 5 days of electronically-filed document
Louisiana-Eastern L.R. 9011-4(b)	Not less than 1 year after case is closed; <i>New proposed L.R. 9011-1(b)(2) says retention for 5 years after case is closed</i>	Attorney of record or party originating document; <i>if new rules go into effect, Clerk's Office will retain original Declaration form with signature(s)</i>	No; <i>New proposed L.R. 1008-1 requires filing of Declaration Regarding Electronic Filing</i>	<i>Under proposed new rule, original Declaration must be filed within 7 days after filing petition</i>
Louisiana-Middle L.R. 1008-1 Local Forms 2 and 3	No less than 5 years after closing of case or adversary proceeding in which document was filed	Attorney (Electronic Filer); Clerk retains original of Declaration	Yes	Debtor (Form 2) – within 7 days after filing petition; Persons other than debtor (Form 3) – within 5 days of filing document
Louisiana-Western Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means	At least 5 years after case is closed. In adversary proceedings, at least 5 years after time for appeals has expired and adversary proceeding is closed.	Attorney of record or party filing document; Retention of Declaration follows same time periods	Yes	Filed no later than 48 hours following the date the petition was electronically filed. Can be scanned and filed electronically if filer is registered participant, or original may be filed conventionally.

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Mississippi-Northern L.R. 5005-1(a)(2)(A); Administrative Procedures for Electronic Case Filing	Until case or adversary proceeding is closed and all maximum allowable times for appeals have expired	Attorney of record or party originating document	No	
Mississippi-Southern L.R. 5005-1(a)(2)(A); Administrative Procedures for Electronic Case Filing	One year after the case is closed	Attorney (Filer)	No	
6th Circuit				
Kentucky-Eastern Administrative Procedures Manual, II.F.	2 years after closing of case or proceeding or after all time periods for appeals have expired	Attorney (Filing User)	No	
Kentucky-Western L.R. 9011-1	2 years following expiration of time for appeals	Attorney (Filer)	No	
Michigan-Eastern ECF Procedures 10 & 11	5 years after closing of case or adversary proceeding	Attorney (Filer or User)	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Michigan-Western L.B.R. 1008; L.B.R. 9011; ECF Administrative Procedures Exhibit 12 (Declaration RE: Electronic Filing)	5 years from date of filing	Attorney (ECF Filer); Court retains original of Declaration	Yes	Filed separately in paper form within 5 days of petition being filed (Declaration form itself says 7 days); Clerk makes text entry in electronic docket that is has been filed, but it's not available for public viewing
Ohio-Northern L.R. 5005-4; ECF Administrative Procedures Manual	1 year following closing of case	Attorney (user)	Yes	Expected to be mailed to court on the same day as electronic filing of initial document requiring debtor's signature (usually petition); if not received within 7 days of electronic filing, show cause hearing is scheduled.
Ohio-Southern L.B.R. 5005-4; Administrative Procedures for ECF, 7 and 8	Minimum of 2 years from closing of case or proceeding	Attorney (Filer or User)	No	
Tennessee-Eastern L.B.R. 5005-4; Administrative Procedures for ECF	2 years after closing of case	Attorney (filing attorney)	No	
Tennessee-Middle Administrative Procedures for ECF 6.	None		No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Tennessee-Western Amended Guidelines for Electronic Filing 5 and 6	5 years after case or proceeding is closed – pages containing original signatures must be retained	Attorney	No	
7th Circuit				
Illinois-Central Third Amended General Order Authorizing Electronic Case Filing	Until all time periods for appeals expire	Attorney (Filing User)	No	
Illinois-Northern L.B.R. 5005-1; Administrative Procedures for the CM/ECF System §II.C.1; Local Form Declarations	None		Yes	Separate Declaration forms for 1) Petition and accompanying documents; and 2) other documents. Must accompany Petition (or other document) but is filed as separate document. Must contain original signature of person whose signature is required on related document and be in a form that can be accurately scanned. Scanned copy of declaration serves as clerk's permanent record.

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Illinois-Southern L.B.R. 5005-3; Electronic Filing Rules 5 and 10	5 years after close of case	Attorney (attorney/participant)	No	
Indiana-Northern L.B.R. 5005-2	At least 3 years following the closing of the case	Attorney (filing attorney)	No	
Indiana-Southern L.B.R. 5005-4; Administrative Policies and Procedures Manual for ECF	2 years after closing of case or as otherwise ordered by the court	Attorney (e-filer)	No	
Wisconsin-Eastern L.B.R. 1008; L.B.R. 5005.1; Form Verification of Signature and Designation of Electronic Counterpart as Original	5 years after close of case unless otherwise ordered by Court	Attorney (filer)	As alternative to retaining hard copy for 5 years, filer may have original document scanned, digitized, and electronically stored for 5 years if Verification of Signature and Designation of Electronic Counterpart as Original is signed and filed.	Verification is filed electronically

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Wisconsin-Western CM/ECF Administrative Procedures §2.D.; Form Declaration re: Electronic Filing	Retention period not specified, but procedures say that upon request, original signed documents must be provided and that “for evidentiary purposes the parties are encouraged to retain the original document in their records.”	Not specified for signed documents; Court retains Declaration	Yes	Hard copy of Declaration filed within 5 days of electronic filing of petition. Paper copy retained by Court “in conformity with its normal internal procedures regarding paper files.”
8th Circuit				
Arkansas-Eastern L.B.R 5005-4; Administrative Procedures for Electronically Filed Cases and Related Documents §D.6	No less than 3 years after case is closed; procedures specify that retention of documents is “for audit purposes.”	Attorney	No	
Arkansas-Western L.B.R 5005-4; Administrative Procedures for Electronically Filed Cases and Related Documents §D.6	No less than 3 years after case is closed; procedures specify that retention of documents is “for audit purposes.”	Attorney	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Iowa-Northern L.B.R. 5005-4; Administrative Procedures for Filing, Signing, Verifying, and Maintaining Pleadings and Other Papers in the Electronic Case Filing (ECF) System	5 years after case is closed	Attorney (Filer)	No	
Iowa-Southern CM/ECF E-Filing Manual: Before You File/Preparing Documents for E-Filing	Until appellate period expires	Attorney	No	
Minnesota L.B.R. 5005-1; L.B.R. 9011-4; Form Signature Declaration	None		Yes	When original signature is required, Filing User shall submit either scanned image of Signature Declaration or the electronic document with a scanned image of the signature page signed by debtor
Missouri-Eastern L.B.R. 5005.A.; L.B.R. 9011	2 years after close of case unless Court orders different time period	Attorney (person filing or submitting document)	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Missouri-Western L.B.R. 1007-1.D.; L.B.R. 5005-1; L.B.F. 1007-1.3 (Declaration re: Electronic Filing); CM/ECF Administrative Procedures	Not less than 2 years after case is closed	Attorney	Yes	Filed electronically on the day the original petition is filed electronically (although L.B.R. 1007-1-D says within 7 days). Contains full SSN of debtor; maintained as private entry in court file and cannot be viewed by public.
Nebraska L.B.R. 5005-1; L.B.R. 9011-1; Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means	At least 1 year after case is closed; for adversary proceedings, until after case ends and time for appeal has expired	Attorney of record or party originating document	No	
North Dakota L.B.R. 5005.1; CM/ECF Administrative Procedures	6 years after case is closed	Attorney (Filing User)	No	
South Dakota L.B.R. 5005-4; ECF Administrative Procedures	Not less than 5 years after case is closed, unless Court directs different period	Attorney or limited user	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
9th Circuit				
Alaska L.B.R. 5005-4; L.B.F. 37A and 37B	None		Yes; separate forms for individuals and corporations	Declaration must be signed before the Petition is filed and filed conventionally within 14 days of the date the Petition is electronically filed. Rule states that “The declaration constitutes the debtor(s)’ original signature for filing purposes.”
Arizona L.B.R. 5005(2); Administrative Procedures for Electronically Filed Cases §§2D and 2H; Form Declaration re: Electronic Filing	Longer period of 1 year after case is closed or all appeals are finalized, unless Court orders otherwise	Attorney (attorney or other user)	Yes	Original Declaration filed with clerk after all schedules and statements have been filed electronically, no later than 20 days after petition was filed.
California-Central L.B.R. 5005-4; §3.4 of Court Manual (CM/ECF Procedures); Form ECF Declarations	5 years after closing of case or adversary proceeding in which document is filed	Attorney (attorney or other CM/ECF user electronically filing document)	Yes; separate forms for individuals and corporations	Scanned copy of Declaration to accompany electronically-filed documents

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
California-Eastern L.B.R. 9004-1(c)	3 years following close of case – retention only required if “/s/ Name” or software-generated electronic signature is used; apparently not required if filer submits scanned copy of originally signed document or scanned copy of signature page attached to electronic document	Attorney (registered user)	No	
California-Northern L.B.R. 5005-2; ECF Procedures §§8 and 9	5 years after case or adversary proceeding in which the document was filed is closed	Attorney (Registered Participant)	No.	
California-Southern Amended Bankruptcy G.O. 162; Administrative Procedures and Guidelines for EF, §§2b. and 2c, Local Form CSD 1801.	5 years after case is closed or adversary proceeding terminated	Attorney (Registered User)	Yes	Filed electronically providing original debtor(s)’ signature in scanned format; filed within 14 days of filing of Petition.

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Guam G.O. 09-00007; Administrative Procedures for the Electronic Filing, Signing, Verifying, and Serving of Bankruptcy Documents	2 years after all time periods for appeals expire	Attorney (ECF Filer)	Yes	Filed in paper form not later than 5 business days after the date of electronic filing of the subject document(s)
Hawaii L.B.R. 5005-4(f); Form Declaration	1 year after case or proceeding is closed; in lieu of originally signed paper document, ECF User may produce the document's scanned image with the digital file's "date modified" information attached.	Attorney (ECF User)	Yes	Paper copy of Declaration with original signature filed within 7 days after the date of the electronic filing of the subject document.
Idaho L.B.R. 5003.1	No less than maximum time to complete any appellate process or the time the case is closed, whichever is later.	Attorney (filing party)	No	When original or amended petition, schedules, and SOFA are filed, attorney must electronically submit scanned pdf copy of original signature page
Montana L.B.R. 1007-1(f). L.B.R. 9011-1(b).	Original signed documents must be retained in paper form for a period of five years after the case is closed.	Attorney (filer)	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Nevada L.B.R. 5005; Electronic Filing Procedures §VIID and XI; L.B.R. 9004; Form NV 5005.2.	Later of 5 years or maximum allowable time to complete appellate process. Declaration must also be retained	Attorney (Filing User)	Yes	Declaration must be signed before documents are electronically filed, and Declaration must be filed within 14 days, either by electronic or conventional means. If Declaration is filed electronically, image of original must be attached to document(s) in PDF format
Oregon L.B.R. 5005-4; Administrative Procedures for ECF system	Later of closing of case or 5 years after filing for documents under FRBP 1008	Attorney (Filing User)	No	
Washington-Eastern L.B.R. 5005-3	Not less than 5 years, maximum allowable time to complete appellate process, or the case or adversary proceeding is closed, whichever is later; retention is of document containing original signature or copy made in the ordinary course of business	Attorney (filing party)	No	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Washington-Western L.B.R. 5005-1; Administrative Procedures for Filing, Signing and Verifying Pleadings and Papers by Electronic Means	Not less than 5 years	Attorney (attorney of record or party originating document)	No	
10th Circuit				
Colorado Amended Administrative Procedures for Electronic Case Filing §II.D; L.B.F. ECF-2; L.B.R. 5005-4(k).	2 years following expiration of all time periods for appeals after entry to final order terminating case or proceeding.	Attorney (Electronic Filer)	No ¹⁹	
Kansas L.R. 5.4.7; 5.4.8; and 83.8.2. L.B.R. 5005.1(VII). L.B.R. 1007.1(a)(3).	6 years after all time periods for appeals expire	Attorney (Filing User)	Yes	Initial Filings: When filing for bankruptcy petition electronically, counsel must submit Declaration Re: Electronic Filing in lieu of Official Form 21.

¹⁹ The original Administrative Procedures for Colorado (2002) required a Declaration when documents requiring the signature of a debtor were filed, but that provision is not in the amended Administrative Procedures (2007).

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
<p>New Mexico L.B.R. 5005-4.2; 5005-4.3; 9011-4; L.B.F. 902, 903; Electronic Filing Procedures</p>	<p>None</p>		<p>Yes</p>	<p>Separate Declaration/signature forms for Petition and Schedules and SOFA filed after petition. For subsequent filings requiring verified signature, attorney must craft own signature page, or prepare Debtor’s Unsworn Declaration Under Penalty of Perjury. Documents with debtor signature are electronically filed using scanning technology. L.B.R. 5005-4.2 states that “verified papers filed electronically shall be treated for all purposes (both civil and criminal, including penalties for perjury) as if they had been physically signed or subscribed.” L.B.R. 9011-4 states that “The court will treat a duplicate signature as an original signature.”</p>
<p>Oklahoma-Eastern L.B.R. 9011-1, 9011-3; CM/ECF Administrative Guide §XI.C.</p>	<p>At least 1 year after case is closed.</p>	<p>Attorney (attorney of record or party originating document)</p>	<p>No</p>	

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Oklahoma-Northern L.B.R. 9011-1; CM/ECF Administrative Guide §XI.C.	At least 1 year after case is closed.	Attorney (attorney of record or party originating document)	No	
Oklahoma-Western General Order: Guidelines for Electronic Case Filing, §§6.E, 10. Form A: Electronic Case Filing System Attorney Registration Form.	1 year after all time periods for appeals from any ruling or decision in bankruptcy case or adversary proceeding have expired	Attorney (Registered Participant)	Yes	Completed form of Declaration Regarding Electronic Filing of Petition and Schedules must be submitted and returned mailed to the court address.
Utah L.B.R. 5005-2; ECF Protocols II.B.5	5 years after all time periods for appeals expire	Attorney (Filing User)	No	
Wyoming ECF Participant Registration Form ²⁰	Not less than 5 years	Attorney of record or party originating document	No	
11th Circuit				
Alabama-Middle L.B.R. 9011-1(b)(2) L.B.R. 1002-1(2); Local Form 1.	4 years after closing of case (apparently only for documents that can't be filed in scanned form)	Attorney (authorized participant)	Yes	Petitions filed by lawyers shall be accompanied by a Declaration re: Electronic Filing of Petition, Schedules & Statements, on Local Form 1.

²⁰ Wyoming is not a mandatory ECF court.

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Alabama-Northern Administrative Procedures for Filing, Signing, Retaining, and Verification of Pleadings and Papers in the CM/ECF System II. C. (1).	3 years after closing of case	Attorney (filer)	No	
Alabama-Southern L.B.R. 1007(b)-1	Not less than 6 years from date of case closing	Attorney.	No	
Florida-Middle L.B.R. 5005-2, 9011-4; Declaration for Electronic Filing	4 years after closing of case	Attorney	Yes, for any verified document not containing an original signature	Filed in PDF format, containing image of original signature of party signing the paper
Florida-Northern Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means	4 years after the closing of the case	Attorney (attorney or other registered user); Clerk retains originals in pro se cases	No	
Florida-Southern L.B.R. 1002-1(4), 1007-1(D), 5005-4(c), and 9011-4(c)	5 years from the date of discharge, dismissal of case, or resolution of appeals, whichever is later	Not specified	Yes	Filed with Petition and with schedules or statements filed separately from petition unless they contain an imaged signature

Bankruptcy Court/ Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?	Procedures for Filing Declaration
Georgia-Middle L.B.R. 5005-4(b)(3); Clerk's Instructions §II(c)(3)	1 year after closing of case	Attorney	No	
Georgia-Northern L.B.R. 5005-7(c)(3); CM/ECF Administrative Procedures; L.B.F. 5005-7(c)(3)(B)	1 year after case or proceeding is closed	Attorney (person filing a Verified Paper)	Yes	Declaration in imaged format filed simultaneously with documents referenced
Georgia-Southern Local Bankruptcy Rules for ECF 7	5 years after conclusion of all appeals or expiration of time for filing an appeal, whichever is later	Attorney (filer)	No; but non-filing signatory or party who disputes authenticity of signature must file an objection within 7 days of receiving the Notice of Electronic Filing	
District of Columbia L.B.R. 5005-4; Administrative Order Relating to Electronic Case Filing (July 7, 2011); Administrative Procedures for Filing, Signing, and Verifying Documents by Electronic Means	5 years from filing of document; can be retained in paper form or electronically (scanned signature); retention requirement does not apply to document filed with scanned image of original signature	Attorney (user)	No	

APPENDIX B
Declaration Provisions in Courts Not Requiring Retention of Hard Copy
Documents Bearing Signatures of Non-Registrants

District of Alaska

Local Bankruptcy Rule 5005-4 Electronic Case Filing

...(c) Signatures.

.....(2) Debtors.

[A] For all petitions, lists, schedules and statements requiring the signature of the debtor(s) that are filed electronically, a Declaration Re: Electronic Filing, AK LBF 37A or 37B, as applicable, must be prepared by the participant, bearing the original signatures of the debtor(s) and the attorney for debtor(s).

[B] The declaration constitutes the debtor(s) original signatures for filing purposes.

[C] The original declaration must be:

- (i) signed before the petition is filed; and
- (ii) filed conventionally with the Bankruptcy Court within fourteen (14) days of the date the petition is electronically filed.

Alaska Local Bankruptcy Form 37A

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:

**Case No.
Chapter**

**DECLARATION RE: ELECTRONIC
FILING
OF PETITION, SCHEDULES,
STATEMENTS, OF 23, AND PLAN IF
CHAPTER 11, 12, OR 13 CASE**

Debtors.

Part I - Declaration of Petitioner(s)

I [We] _____ and _____, the undersigned debtor(s), hereby declare under penalty of perjury that the information given or to be given my [our] attorney and the information provided in the electronically filed petition, statements, schedules, matrix, OF 23 and in my [our] chapter 11, 12 or 13 plan (if this is a case under such chapter) and any amendments thereto, is or will be true and correct. I [We] consent to my [our] attorney sending my [our] petition, statements and schedules (and plan, if applicable) and any amendments thereto, and our OF 23, to the United States Bankruptcy Court electronically. I [We] understand that this Declaration re: Electronic Filing is to be filed with the Clerk not later than 14 days following the date the petition is electronically filed. I [We] understand that failure to file the signed original of this Declaration will result in the dismissal of my [our] case after a hearing on shortened time of no less than five days notice.

[] If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7: I am [We are] aware that I [we] may proceed under chapter 7, 11, 12 or 13 of 11 United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I [We] request relief in accordance with the chapter specified in this petition.

Dated:

Signed: _____
(Applicant)

(Joint Applicant)

Part II - Declaration of Attorney

I declare under penalty of perjury that the debtor(s) signed this form before I electronically submitted the petition, schedules, and statements (and chapter 11, 12 or 13 plan, if applicable). Before filing, I will give the debtor(s) a copy of all documents to be filed with the United States Bankruptcy Court, and have followed all other requirements in the most recent ECF System Procedures. I further declare that I have examined or will examine the debtor's petition, schedules, and statements and any amendments thereto, as well as the debtor's OF 23, and, to the best of my knowledge and belief, they are or will be true, correct, and complete. I further declare that I have informed the petitioner(s) that [he or she or they] may proceed under chapter 7, 11, 12 or 13 of Title 11, United States Code, and have explained the relief available under each such chapter. This declaration is based on all information of which I have knowledge.

Dated:

Attorney for Debtor(s)

Northern District of Illinois Administrative Procedures for the Case Management/Electronic Case Filing System

...II.C. Signatures

II.C.1. Original Non-Attorney Signatures

II.C.1.a. Petitions and Accompanying Documents

When a bankruptcy petition is filed electronically, the petition must be accompanied by a Declaration Regarding Electronic Filing. The Declaration will serve as the required signature(s) on the petition and all other documents filed contemporaneously with the petition that must be signed by the debtor(s) or the representative of a non-individual debtor.

II.C.1.b. Documents Filed After Petition

Except for petition filings covered by subparagraph II.C.1.a., if any document filed electronically, including those documents listed in Fed.R.Bankr.P. 1008, must be signed by a person other than the Registrant filing the document, a Declaration Regarding Electronic Filing signed by each person whose signature is required must accompany the document.

II.C.1.c. Requirements

A Declaration Regarding Electronic Filing must

- (a) be in a form approved by the clerk;
- (b) be filed as a separate document for docketing, not as an attachment to the document requiring signature;
- (c) be dated;
- (d) identify the document to which the Declaration relates;
- (e) contain an original signature of the person whose signature is required on the document to which the Declaration relates; and
- (f) be in a form that can be accurately scanned.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

**Chapter
Bankruptcy Case No.**

Debtors.

**DECLARATION REGARDING ELECTRONIC FILING
PETITION AND ACCOMPANYING DOCUMENTS**

DECLARATION OF PETITIONER(S)

A. [To be completed in all cases]

I (We), _____ and _____ the undersigned debtor(s), corporate officer, partner, or member hereby declare under penalty of perjury that (1) the information I (we) have given my (our) attorney is true and correct; (2) I (we) have reviewed the petition, statements, schedules, and other documents being filed with the petition; and (3) the documents are true and correct.

B. [To be checked and applicable only if the petition is for a corporation or limited liability entity.]

[] I, _____, the undersigned, further declare under penalty of perjury that I have been authorized to file this petition on behalf of the debtor.

Printed or Typed Name of Debtor or Representative

Printed or Typed Name of Joint Debtor

Signature of Debtor or Representative

Signature of Joint Debtor

Date

Date

District of Minnesota

Local Bankruptcy Rule 9011-4 Signatures

...(d) ELECTRONIC SIGNATURES – DEBTORS. When an original signature of a debtor, authorized individual or joint debtor is required on the (1) petition, schedules and statements; (2) amendment to petition, schedules and statements; (3) chapter 13 plan; or (4) modified chapter 13 plan, the Filing User shall submit either a scanned image of the Form ERS 1 Signature Declaration signed by the debtor(s) or the electronic document with a scanned image of the signature page signed by the debtor(s). The scanning of documents is governed by Local Rule 9004-1(e).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

SIGNATURE DECLARATION

Debtor(s).

Case No. _____

- ___ PETITION, SCHEDULES & STATEMENTS
___ CHAPTER 13 PLAN
___ SCHEDULES AND STATEMENTS ACCOMPANYING VERIFIED
CONVERSION
___ AMENDMENT TO PETITION, SCHEDULES & STATEMENTS
___ MODIFIED CHAPTER 13 PLAN
___ OTHER (Please describe: _____)

I [We], the undersigned debtor(s) or authorized representative of the debtor, **make the following declarations under penalty of perjury:**

- The information I have given my attorney and provided in the electronically filed petition, statements, schedules, amendments, and/or chapter 13 plan, as indicated above, is true and correct;
- The information provided in the “Debtor Information Pages” submitted as a part of the electronic commencement of the above-referenced case is true and correct;
- **[individual debtors only]** If no Social Security Number is included in the “Debtor Information Pages” submitted as a part of the electronic commencement of the above-referenced case, it is because I do not have a Social Security Number;
- I consent to my attorney electronically filing with the United States Bankruptcy Court my petition, statements and schedules, amendments, and/or chapter 13 plan, as indicated above, together with a scanned image of this Signature Declaration and the completed “Debtor Information Pages,” if applicable; and
- **[corporate and partnership debtors only]** I have been authorized to file this petition on behalf of the debtor.

Date: _____

X _____
Signature of Debtor or Authorized
Representative

Printed Name of Debtor or Authorized
Representative

X _____
Signature of Joint Debtor

X _____
Printed Name of Joint Debtor

District of New Hampshire

Administrative Order 5005-4

...(d) Signatures and Declarations Regarding Electronic Filing

... (3) Documents Containing Original Signatures Under Oath Require Submission of Declaration Regarding Electronic Filing. If a document that is electronically filed contains an original signature under oath, other than that of the Filing User, a paper copy of a Declaration Regarding Electronic Filing must be submitted to the Court within seven (7) days. Examples of documents that require the submission of a Declaration Regarding Electronic Filing include petitions, amendments to schedules/statements, affidavits, verified complaints and plans if signed under oath. The Declaration Regarding Electronic Filing must be in the form of LBFs 5005-4A or 5005-4B, must be signed under oath and must have attached to it a copy of the Notice of Electronic Filing for that document, which includes the electronic document stamp. As part of the clerk's duty to maintain records, the clerk shall retain all Declarations Regarding Electronic Filing that are submitted to the Court.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re: _____, Bk. No. _____ - _____ -MWV or JMD
Debtor Chapter _____

Full Social Security No. of Debtor: _____ - _____ - _____

Full Social Security No. of Joint Debtor: _____ - _____ - _____

**DECLARATION REGARDING ELECTRONIC FILING FOR PETITIONS,
SCHEDULES
AND AMENDMENTS TO SCHEDULES**

PART 1 - Declaration of Petitioner:

I, _____, the undersigned debtor, corporate officer, partner or managing member, hereby declares under penalty of perjury that the information I have given my attorney and the information contained in the petition, statements and schedules, or amendments thereof that are to be electronically filed (the "petition and schedules"), consisting of ___ pages, is true and correct, to the best of my knowledge and belief. I understand that this DECLARATION REGARDING ELECTRONIC FILING is to be submitted to the clerk after the petition and schedules have been filed electronically but, in no event, no later than seven (7) days after the petition and schedules have been filed. I acknowledge receipt of a copy of the petition and schedules that are to be electronically filed.

[] [If petitioner is an individual] I am aware that I may proceed under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code, and I understand the relief available under each such chapter. I request relief in accordance with the chapter specified in the petition. I declare under penalty of perjury that the foregoing Social Security number is true and correct.

[] [If petitioner is a corporation, partnership or limited liability entity] I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter specified in this petition.

I understand that failure to file the signed original of this DECLARATION is grounds for dismissal of my case pursuant to 11U.S.C. § 707(a)(3).

Date: _____
Authorized Corporate Officer/Partnership Member

Signed: _____
Debtor Joint Debtor (if joint case, both spouses must sign)

Part 2 - Declaration of Attorney:

I declare that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that the petition and schedules are not being presented for any improper purpose; that the claims, defenses, and other legal contentions therein are warranted and are not frivolous; that the allegations and other factual contentions have, or will have, evidentiary support; and that the denials of factual contentions are warranted. I further certify that the debtor signed this Declaration and authorized me to electronically file the petition and schedules, that I gave the debtor a copy of the petition and schedules that are to be electronically filed, and that the petition and schedules identified in the attached Notice of Electronic Filing from the CM/ECF system fully and accurately reflect the information given to me by

The debtor. I have complied with all other electronic filing requirements. I have informed the individual petitioner that [he and/or she] may proceed under Chapter 7, 11, 12 or 13 of Title 11 of the United States Code and have explained the relief available under each such chapter. This declaration is based upon all information of which I have knowledge.

Date: _____

Attorney Signature

Print Name

Address _____

Tel. No. _____

NOTE: You must attach the Notice of Electronic Filing as an exhibit.

(FILE ORIGINAL WITH COURT. DO NOT FILE ELECTRONICALLY.)

District of New Mexico

Electronic Filing Procedures

11 Signatures

...

11.2 Verified Signature of Person Other Than Attorney. Documents which require the verified signature of a person other than the electronically filing attorney may be electronically filed utilizing scanning technology. Documents which require the verified signature of the debtor include the petition, schedules, statement of affairs, statement of intent, non-filing spouse certification, reaffirmation agreement, an application to pay filing fee in installments, and amendments to the petition³.

³**Fed. R. Bankr. P. 1008.**

Please carefully review the various debtor signature forms for electronically filed petitions you will find on the Court's Web site (select "Forms," and then click on "Debtor's Signature Pages"). These forms are designed to be used upon the initiation of the case (or filing schedules after a skeleton petition has been filed), not for subsequent or unrelated documents, such as an amendment to the petition or an amended statement of intention. In these instances, you will need to craft your own signature page, use the one produced by your software, or prepare the Debtor's Unsworn Declaration Under Penalty of Perjury (following the form posted on the Court's Website).

Scanning may also be utilized for documents containing verified signatures of other persons, e.g., reaffirmation agreements and affidavits:

“. . .an electronically filed affidavit would have to be scanned in so that the required signatures would be visible on the “official” electronic document.”

Clark v. Ford Motor Credit Co. (In re Clark), Case No. 7-03-15342 M A, Adv. No. 03-1381 M, docket No. 38, United States Bankruptcy Court, District of New Mexico, August 10, 2004, at www.nmb.uscourts.gov.

Eastern District of Wisconsin

LR 5005.1 Retention of Electronically Filed Documents.

- (a) Documents which must contain original signatures of the debtor(s) or other entities, including those which are: signed under penalty of perjury; require verification under Fed.R.Bankr.P. 1008; or contain an unsworn declaration as provided in 28 U.S.C. § 1746 must be maintained by the filer of the document for a period of five years after the closing of the case unless the Court orders a different period. On request of the Court or any party in interest, the filer must provide the original documents for review.
- (b) As an alternative to maintaining the above referenced documents for a period of five years, the filer may have the original document, including any original signature, scanned, digitized and electronically stored for five (5) years. Such document shall be deemed a counterpart intended by the person executing or issuing it to have the same effect as an original pursuant to Federal Rule of Evidence 1001(3) provided the person or persons executing or issuing the document shall have signed and filed in the case a Verification of Signature and Designation of Electronic Counterpart as Original as set forth in the Appendix to these Rules. On the request of the Court or any party in interest the filer must provide a copy of the electronic document.

In the Matter of:

Chapter

Debtor(s).

Case No.

VERIFICATION OF SIGNATURE AND DESIGNATION OF ELECTRONIC COUNTERPART AS ORIGINAL

I (we), _____ and _____, the undersigned debtor(s), corporate officer, partner or member, hereby declare under penalty of perjury that the signature(s) below are the signature(s) of the debtor(s), corporate officer, partner or member who has signed or will sign any document in this case which is signed under penalty of perjury, requires verification under Fed. R. Bankr. P. 1008 or contains an unsworn declaration under 28 U.S.C. 1746. I (we) do further declare that any of the foregoing documents executed or issued by me (us) which are maintained by the filer thereof in an electronic format pursuant to Local Bankruptcy Rule 5005.1(b) are intended by me (us) to be a counterpart having the same effect as an original pursuant to Fed. R. Evidence 1001(3).

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____
(Debtor or Corporate Officer, Partner, Member) (Joint Debtor)

Date: _____

Attorney Name
Street Address
Suite #
City, State, Zip
Phone No.
FAX No.
E-mail

APPENDIX C

Local District Court Procedures on Signatures of Non-Filing Users of CM/ECF and Retention of Signed Documents

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
1st Circuit			
<p><u>Maine</u> <u>Civil Cases & Criminal Cases</u></p> <p>Local Civil Rule 10 Form of Pleadings, Motions And Other Papers</p> <p><i>See also D Maine Local Rules, Appendix IV Administrative Procedures Governing The Filing And Service By Electronic Means, § (h) Signature (same)</i></p>	<p>For a period of not less than two (2) years after the expiration of the time for filing a timely appeal</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Massachusetts</u> <u>Civil Cases & Criminal Cases</u></p> <p><i>*Administrative Procedures for Electronic Case Filing in the United States District Court for the District of Massachusetts, § M. Signature & § Y. Retention (retention period applies to any document requiring an original signature).</i></p> <p><i>*Referenced in Local Rule 5.4(B)</i></p> <p><i>See also Electronic Case Filing CM/ECF User's Manual: Signatures; Affidavits of Service (same as above)</i></p>	<p>Until two (2) years after the expiration of the time for filing a timely appeal</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>New Hampshire</u> <u>Civil Cases & Criminal Cases</u></p> <p>Local Rules Appendix A Supplemental Rules For Electronic Case Filing, Rule 2.7 Signatures on Electronically Filed Documents, (e) Retention of Documents</p>	<p>Until three (3) years after the date of filing or until the conclusion of all appeals in the case, whichever date is later</p>	<p>Attorney (Filing User)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Puerto Rico</u> <u>Civil & Criminal Cases</u></p> <p>Standing Order No. 1, In the Matter of Electronic Case Filing, Misc. No. 03-149(HL) (11/24/03), § 8. Retention Requirements (p.7)</p>	Until 5 years after all time periods for appeals expires	Attorney (Filing User)	No
<p><u>Rhode Island</u> <u>Civil & Criminal Cases</u></p> <p>Lr Gen 307 Document Retention Requirements</p>	Until two years after a final decision has been rendered which disposes of all aspects of the case	Attorney (Filing User)	No
2nd Circuit			
<p><u>Connecticut</u> <u>Civil & Criminal Cases</u></p> <p><i>Electronic Filing Policies And Procedures</i>, §§ XI. Signatures & XV. Retention of Originals of Documents Requiring Scanning</p>	For a period of five years following the expiration of all time periods for appeals or statutes of limitation	Attorney (filer)	No
<p><u>New York Eastern</u> <u>Civil Cases & Criminal Cases</u></p> <p><i>CM/ECF User's Guide, Introduction.</i></p> <p><u>Note:</u> We were unable to locate a provision specifically addressing retention of non-attorney original signatures.</p>			
<p><u>New York Northern</u> <u>Civil Cases & Criminal Cases</u></p> <p><i>General Order #22 Administrative Procedures for Electronic Case Filing</i>, Rule 4.8 Document Retention; Rule 6.2 Non-Attorney signature</p>	For a period of not less than sixty days after all dates for appellate review have expired	Attorney (Filing User)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>New York Southern Civil & Criminal Cases</u></p> <p><i>Electronic Case Filing Rules & Instructions, Part I.7 Retention Requirements</i></p>	<p>Until one year after all time periods for appeals expire, except that affidavits, declarations and proofs of service must be maintained in paper form by the Filing User until five years after all time periods for appeals expire</p>	<p>Attorney (Filing User)</p>	<p>No</p>
<p><u>New York Western Civil & Criminal Cases</u></p> <p><i>*Administrative Procedures Guide, Rule 2.g.v.</i></p> <p>*Referenced in Local Rule 5.1(a)</p>	<p>For a period of five years following the expiration of all time periods for appeals</p>	<p>Attorney (Filing Party)</p>	<p>No</p>
<p><u>Vermont Civil & Criminal Cases</u></p> <p><i>*Administrative Procedures For Electronic Case Filing (ECF), § (J)(5) Retention of Documents.</i></p> <p>*Referenced in Local Rule 5(b)</p>	<p>Until two (2) years after the expiration of the time for filing a timely appeal</p>	<p>Attorney (Filing User)</p>	<p>No</p>
<p>3rd Circuit</p>			
<p><u>Delaware Civil & Criminal Cases</u></p> <p><i>*Revised Administrative Procedures Governing Filing And Service By Electronic Means, § (H) Signature</i></p> <p>*Referenced in Civil Local Rule 5.1(a)</p>	<p>For two (2) years after the expiration of the time for filing a timely appeal</p>	<p>Attorney (Filer)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>New Jersey</u> <u>Civil Cases & Criminal Cases</u></p> <p>Civ. Rule 5.2 Electronic Service And Filing Documents, Electronic Case Filing Policies And Procedures, 13. Retention Requirements.</p>	<p>Until one (1) year after all periods for appeals expire</p>	<p>Attorney (ECF Filing User) and/or the firm representing party on whose behalf the document was filed</p>	<p>No</p>
<p><u>Pennsylvania-Eastern</u> <u>Civil & Criminal Cases</u></p> <p>LR 5.1.2(11) Retention Requirements</p>	<p>Until three (3) years after the time period for appeal expires</p>	<p>Attorney (ECF Filing User)</p>	<p>No</p>
<p><u>Pennsylvania-Middle</u> <u>Civil Cases</u> <i>*ECF User Manual, Retention Requirements (p. 12)</i></p> <p><i>See also *Standing Order 04-6 Electronic Case Filing Policies and Procedures, 10. Retention Requirements (same)</i></p> <p><i>*Referenced in LR 5.6</i></p>	<p>Until one year after all periods for appeals expire</p>	<p>Counsel and/or the firm representing the party on whose behalf the document was filed</p>	<p>No</p>
<p><u>Criminal Cases</u> <i>ECF User Manual, Retention Requirements page 12</i></p> <p><i>Standing Order 04-6 Electronic Case Filing Policies and Procedures, 10. Retention Requirements</i></p>	<p>Until one year after all periods for appeals expire</p>	<p>United States Attorney</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Pennsylvania-Western Civil Cases</u></p> <p><i>Standing Order 09-2 adopting changes to ECF Policies and Procedures, Case 2:05-mc-186</i></p> <p><i>Electronic Case Filing Policies and Procedures, 10. Retention Requirements (same)</i></p> <p><i>ECF User Manual, 13. Retention Requirements (same)</i></p>	<p>Until one year after all periods for appeals expire</p>	<p>Counsel and/or the firm representing the party on whose behalf the document was filed</p>	<p>No</p>
<p><u>Criminal Cases</u></p> <p><i>Standing Order 09-2 adopting changes to ECF Policies and Procedures, Case 2:05-mc-186</i></p> <p><i>Electronic Case Filing Policies and Procedures, 10. Retention Requirements</i></p> <p><i>ECF User Manual, 13. Retention Requirements</i></p>	<p>Until one year after all periods for appeals expire</p>	<p>United States Attorney</p> <p>includes all papers with defendant's original signature</p>	<p>No</p>
<p><u>Virgin Islands Civil & Criminal Cases</u></p> <p>Rule 5.4 Electronic Filing, (g) Retention Requirements</p>	<p>Until five years after all time periods for appeals expire</p>	<p>Filing User</p>	<p>No</p>
<p>4th Circuit</p>			
<p><u>Maryland Civil Cases</u></p> <p><i>Electronic Filing Requirements and Procedures for Civil Cases, F. Signatures</i></p>	<p>Until all appeals have been exhausted or the time for seeking appellate review has expired</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Criminal Cases</u></p> <p><i>Electronic Filing Requirements and Procedures for Criminal Cases, III.E. Signatures</i></p>	<p>Until all appeals have been exhausted or the time for seeking appellate review has expired</p>	<p>Attorney (filer)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>North Carolina Eastern Civil and Criminal Cases</u></p> <p><i>*Electronic Case Filing User's Manual, The Mechanics of Electronic Filing, Signatures.</i></p> <p><i>*Referenced in Civil Local Rule 5.1(a)(1) & Criminal Local Rule 49.1</i></p>	<p>Until 2 years after the expiration of the time for filing a timely appeal of a final judgment or decree, or after receipt by the Clerk of Court of an order terminating the action on appeal</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>North Carolina Middle Civil Cases & Criminal Cases</u></p> <p>Civil LR 5.3 Electronic Filing Of Documents, (e) Signatures</p> <p><i>See also Electronic Case Filing Administrative Policies And Procedures Manual, § I. Signatures (same)</i></p>	<p>Until two (2) years after the expiration of the time for filing a timely appeal of a final judgment or decree, or after receipt by the Clerk of Court of an order terminating the action on appeal</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>North Carolina Western Civil & Criminal Cases</u></p> <p><i>*Administrative Procedures Governing Filing And Service By Electronic Means, § II. Electronic Filing And Service of Documents, C. Signatures, 1. Non-Attorney Signature, Generally</i></p> <p><i>*Referenced in LCvR 5.2.1(A)</i></p>	<p>For two years after the expiration of the time for filing a timely appeal of a final judgment or decree, or after receipt by the Clerk of Court of an order terminating the action on appeal</p>	<p>Attorney (filing party)</p>	<p>No</p>
<p><u>South Carolina Civil Cases</u></p> <p><i>*Electronic Case Filing Policies and Procedures Manual, 9. Document Retention Requirements, 10.5 Signatures of Persons Other Than Filing Users</i></p> <p><i>*Referenced in L. Civil Rule 5.04</i></p>	<p>For six (6) years after the time for all appeals has expired or the judgment otherwise becomes final</p>	<p>Attorney (filing user) and/or the firm representing the party on whose behalf the document was filed</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<u>South Carolina</u> <u>Criminal Cases</u> <i>Electronic Case Filing Policies and Procedures Manual, 9. Document Retention Requirements, 10.5 Signatures of Persons Other Than Filing Users</i>	For six (6) years after the time for all appeals has expired or the judgment otherwise becomes final	The Office of the U.S. Attorney or the U.S. Department of Justice	No
<u>Virginia Eastern</u> <u>Civil & Criminal Cases</u> <i>EDVA Electronic Case Filing Policies and Procedures Manual, Chapter 3 Signatures</i>	For the duration of the case, including any period of appeal	Attorney (filer)	No
<u>Virginia Western</u> <u>Civil Cases</u>	None	N/A	No
<u>Criminal Cases</u> <i>Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means, Q. Retention</i>	Until two years following the expiration of all appeal periods	U.S. Attorney's Office	No
<u>West Virginia Northern</u> <u>Civil & Criminal Cases</u> <i>An Attorney's Guide To The Court's Administrative Procedures For Electronic Case Filing, 15.3. Non-Attorney Signature/Multiple Signatures</i>	For a period of not less than sixty days after all dates for appellate review have expired	Attorney (filer)	No
<u>West Virginia Southern</u> <u>Civil & Criminal Cases</u> <i>Administrative Procedures For Electronic Case Filing, 14.6 Document Retention & 15.3 Non-Attorney Signatures</i>	For a period of not less than two (2) years after all dates for appellate review have expired	Attorney (filing user)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
5th Circuit			
<u>Louisiana Eastern Civil & Criminal Cases</u> <i>Administrative Procedures For Electronic Case Filing, Rule 7 Retention Requirements, Rule 8 Signatures</i>	Until one year after all time periods for appeals expire	Attorney (Filing User)	No
<u>Louisiana Middle Civil & Criminal Cases</u> <i>*Administrative Procedures For Filing, Signing, And Verifying Pleadings And Papers By Electronic Means In Civil And Criminal Cases, § I. The Electronic Filing System - General Requirements, F. Signatures, 2. Non-Attorney Signatures, Generally. *Referenced in LR 5.5</i>	For 1 year from the expiration of all time periods for appeals	Attorney (Filing User)	No
<u>Louisiana Western Civil Cases & Criminal Cases LR 5.7.07 Retention Requirements</u>	For 1 year from the expiration of all time periods for appeals	Attorney (Filing User)	No
<u>Mississippi Northern Civil & Criminal Cases</u> <i>*Administrative Procedures for Electronic Case Filing, Electronic Means for Filing, Signing and Verification of Pleadings and Papers, § 3.D. Signatures *Referenced in Local Civil Rule 5(c)</i>	Until all time periods for the appeal have expired	Attorney (filer)	No
<u>Mississippi Southern Civil & Criminal Cases</u> <i>*Administrative Procedures for Electronic Case Filing, Electronic Means for Filing, Signing and Verification of Pleadings and Papers, § 3.D. Signatures *Referenced in Local Civil Rule 5(c)</i>	Until all time periods for the appeal have expired	Attorney (filer)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<u>Texas Eastern Civil & Criminal Cases</u> <i>Electronic Case Files (CM/ECF) User's Manual, Signatures (page 13).</i>	Unspecified	Attorney (filer)	No
<u>Texas Northern Civil Cases</u> Civil LR 11.1 Electronic Signature. (d) Requirements for Another Person's Electronic Signature.	For one year after final disposition of case	Attorney (filer)	No
<u>Criminal Cases</u> Criminal LR 49.5 Electronic Signature. (d) Requirements for Another Person's Electronic Signature.	Same	Same	No
<u>Texas Southern Civil & Criminal Cases</u> <i>*Administrative Procedures for ECF - Civil/Criminal, 8. Signatures and Retention Requirements, C. Documents containing multiple persons' signatures.</i> <i>*Referenced in LR5.1.</i>	Until expiration of three years after the time for all appeals in the case	Attorney (filing user)	No
<u>Texas Western Civil & Criminal Cases</u> <i>*Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases, § 14 Signatures and Retention Requirements</i> <i>*Referenced in Local Civil Rule CV-5(a)(1).</i>	For one year after final resolution of the action, including any appeal	Attorney (Filing User)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
6th Circuit			
<p><u>Kentucky Eastern and Western Civil & Criminal Cases</u> <i>*Amended Electronic Case Filing Administrative Policies And Procedures, 10. Retention Requirements</i></p> <p><i>See also *ECF User's Manual, Signatures & Retention Requirements (p. 11, 13) (same)</i></p> <p><i>*Referenced in Joint General Order Number 11- 02: In Re: Electronic Case Filing Administrative Policies And Procedures as Amended July, 2011</i></p>	One year after all periods for appeals expire	by counsel and/or the firm representing the party on whose behalf the document was filed	
<p><u>Michigan Eastern Civil & Criminal Cases</u> <i>*Electronic Filing Policies and Procedures, R17 Retention Requirements</i></p> <p><i>*Referenced in Civil LR 5.1.1(a) (Appendix ECF to Civil Local Rules)</i></p>	Unspecified	The Court encourages filing users to retain the originals of papers with intrinsic value	No
<p><u>Michigan Western Civil Cases</u> Local Civil Rule 5.7 Filing and service by electronic means, (e) Signature, (viii) Evidence of Original Signature</p>	Until one year after the final resolution of the action (including appeal, if any)	Attorney (filer)	No
<p><u>Criminal Cases</u> Local Criminal Rule 49.10 Filing and service by electronic means, (e) Signature, (viii) Evidence of Original Signature</p>	Same	Same	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Ohio Northern Civil & Criminal Cases</u></p> <p><i>*Electronic Filing Policies And Procedures Manual, 10. Filing Documents Electronically, 17. Retention of Originals of Documents Requiring Scanning (July 26, 2011)</i></p> <p>*Referenced in Civil Local Rule 5.1(b).</p>	<p>For a period of one year following the expiration of all time periods for direct appeals.</p>	<p>Attorney (filing party)</p>	<p>No</p>
<p><u>Ohio Southern Civil Cases</u></p> <p><i>*CM/ECF Attorneys' Manual, Signatures; Affidavits of Service (p.14)</i></p> <p>*Referenced in Local Rule 5.1(c).</p>	<p>After the case ends, at least until the time for all appeals have expired</p>	<p>Attorney (filing party)</p>	<p>No</p>
<p><u>Criminal Cases</u></p> <p>Local Criminal Rule 49.1 Serving and Filing Papers</p>	<p>For five years or for the period within which the Clerk would maintain original material under S. D. Ohio Civ. R. 79.2 (six (6) months after final termination of the action), whichever period is longer.</p>	<p>Attorney (filing user)</p>	<p>No</p>
<p><u>Tennessee Eastern Civil & Criminal Cases</u></p> <p><i>*Electronic Case Filing Rules And Procedures, 7. Retention Requirements</i></p> <p>*Referenced in LR 5.2(e).</p>	<p>One year after all time periods for all appeals expire</p>	<p>Counsel representing the party on whose behalf the document was filed</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Tennessee Middle Civil Cases & Criminal Cases</u></p> <p><i>*Administrative Order No. 167, Administrative Practices and Procedures for Electronic Case Filing (ECF), 15. Retention Requirements</i></p> <p>*Referenced in LR5.03(a)</p>	For one year after all time periods for all appeals expire	Filing user (counsel representing the party on whose behalf the document was filed)	No
<p><u>Tennessee Western Civil Cases</u></p> <p>Local Rules, Appendix A Electronic Case Filing Policies And Procedures Manual, 9. Document Retention Requirements, 10.5 Signatures of Persons Other Than E-Filers</p>	For no less than five (5) years after the time for all appeals has expired or the judgment otherwise becomes final	Attorney (Efiler) and/or the firm representing the party on whose behalf the document was filed	No
<p><u>Criminal Cases</u></p> <p>Same</p>	Same	By the Office of the United States Attorney or the United States Department of Justice	No
<p>7th Circuit</p>			
<p><u>Illinois Central Civil Cases</u></p> <p>Civil Rule 11.4 Electronic Signatures, (B) Signatures by Non-Electronic Filers</p>	Until one year after the date that the judgment has become final by the conclusion of direct review or the expiration of the time for seeking such review has passed	Attorney (filing party)	No
<p><u>Criminal Cases</u></p> <p>Criminal Rule 49.10 Electronic Signatures, (B) Signatures by Non-Electronic Filers.</p>	Same	Same	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Illinois Northern Civil & Criminal Cases</u></p> <p><i>*General Order 2011-24 on Electronic Case Filing. Part VIII. Retention Requirements for Documents with Signatures of Persons Other Than E-Filers.</i></p> <p>*Referenced in LR5.2 (a)</p>	4 years after all time periods for appeals expire	Attorney (E-filer)	No
<p><u>Illinois Southern Civil & Criminal Cases</u></p> <p><i>Electronic Filing Rules, Rule 7 Retention Requirements See also CM/ECF User's Manual, 2.1 Retention and Signature Requirements adds exception</i></p>	For 5 years after final resolution of the action, including final disposition of all appeals	Attorney (filer) ²¹	
<p><u>Indiana Northern Civil Cases</u></p> <p><i>*CM/ECF Civil And Criminal User Manual, Electronic Means for Filing, Signing and Verification of Documents, II. Electronic Filing And Service Of Documents, E. Signatures</i></p> <p>*Referenced in N.D. Ind. L.R. 5-1(a).</p>	Unspecified	Attorney (filer)	No
<p><u>Criminal Cases</u></p> <p><i>CM/ECF Civil And Criminal User Manual, Electronic Means for Filing, Signing and Verification of Documents, II. Electronic Filing and Service of Documents, E. Signatures</i></p>	Unspecified	Clerk's Office	No

²¹ In the following exceptional instances, a document bearing an original signature(s) is scanned and electronically filed, and the original document is mailed to the Clerk of Court for retention: A. Any affidavit or document containing an oath or a declaration, certification, verification, or statement under the penalty of perjury by any person other than an attorney of record in the case; B. Any document setting forth any stipulation by any person other than an attorney of record in the case; C. Any document containing the signature of a defendant; and D. Certified copies of judgments or orders of other courts.

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<u>Indiana Southern</u> <u>Civil Cases & Criminal Cases</u> Local Rule 5-9 - Retention of Papers in Cases Filed Electronically	For two years after all deadlines for appeals in the case expire	Attorney (Filing User)	No
<u>Wisconsin Eastern</u> <u>Civil Cases</u> <i>Electronic Case Filing Policies And Procedures Manual, II.C.2.a. Signatures</i>	Until one year has passed after the time period for appeal expires	Attorney (filer)	No
<u>Criminal Cases</u> <i>Electronic Case Filing Policies And Procedures Manual, II.C.2.b. Signatures</i>	until one year has passed after the time period for appeal expires ^{22*}	Attorney (filer)*	No
<u>Wisconsin Western</u> <u>Civil Cases & Criminal Cases</u> <i>*Administrative Procedures For Electronic Case Filing, IV. General Guidance, E. Signatures</i>	For two (2) years after final resolution of the action, including final disposition of all appeals	Attorney (Filing User)	No
*Referenced in LR 5.1			
8th Circuit			
<u>Arkansas Eastern & Western</u> <u>Civil Cases</u>	None	N/A	No
<u>Criminal Cases</u> <i>*Administrative Policies And Procedures Manual For Criminal Filing, IV.D. Documents Containing Certain Original Signatures</i> *Referenced in Local Rule 5.1	Unspecified	Clerk's office ²³	

²² *Exception--If the original document contains the signature of a criminal defendant, a third-party custodian, a U. S. Marshal, an officer from the U.S. Probation Office, or some other federal officer or agent, Clerk's office disposes of document after it is scanned and uploaded to ECF.

²³ Documents in criminal cases containing the signature(s) of a defendant, a grand jury foreperson, a surety, or a third-party custodian shall be filed conventionally. The Clerk's office will scan these original documents into an electronic file and upload them into the System but will maintain the original in a paper file.

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Iowa Northern & Southern Civil Cases & Criminal Cases</u></p> <p>LR 5.2 Electronic Filing And Electronic Access To Case Files, i. Original Documents Retained by Lawyer or Party.</p> <p><i>*Note there is a slight discrepancy in the retention period as stated in LR 5.2 and in the Manual.</i></p> <p><i>Electronic Case Filing Procedures Manual, XIV. Retention of Documents, A. Original Documents Retained By Lawyer Or Party</i></p>	<p>During the pendency of the case and for 5 years after the filing of the document</p> <p>During the pendency of the case</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Minnesota Civil Cases</u></p> <p><i>Electronic Case Filing Procedures Guide, Civil Cases § II. Electronic Filing And Service Of Documents, C. Signatures, 2. Non-Attorney/Third Party Signatures, Generally.</i></p> <p><i>(note: These documents should be retained in accordance with the retention rules required by the Eighth Circuit and Federal Circuit).</i></p>	<p>Until the case is terminated with finality with no right of appeal or until such later date as the court prescribes*</p> <p>*Source: Federal Circuit Court of Appeals, <i>Administrative Order Regarding Electronic Case Filing</i>, ECF-4. CM/ECF Retention Requirements</p>	<p>Filer (certifying attorney's office)</p>	<p>No</p>
<p><u>Criminal Cases</u></p> <p><i>Electronic Case Filing Procedures Guide, Criminal Cases, § II. Electronic Filing And Service Of Documents, C. Signatures, 2. Non-Attorney/Third Party Signatures, Generally</i></p>	<p>Until the case is terminated with finality with no right of appeal or until such later date as the court prescribes*</p>	<p>Filer (certifying attorney's office)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Missouri Eastern Civil & Criminal Cases</u></p> <p>Local Rule 11 - 2.11 Signatures on Electronic Filings.</p> <p><i>See also Administrative Procedures for Case Management/Electronic Case Filing (CM/ECF), § II.H. Signatures and Appendix D (Sample Form--Verification of Signed Original Document)</i></p>	<p>During the pendency of the litigation including all possible appeals</p>	<p>Attorney (filer)</p>	<p>Yes; where an electronic document is signed by one other than the filing attorney, the attorney must file a verification attesting to the existence of the signed original document</p>
<p><u>Missouri Western Civil Cases</u></p> <p><i>*CM/ECF Civil And Criminal Administrative Procedures Manual, Signatures: Affidavits of Service, 2. Civil Cases (p.6)</i></p> <p><i>*Referenced in Local Civil Rule 5.1</i></p>	<p>For two (2) years after final resolution of the action, including final disposition of all appeals</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Criminal Cases</u></p> <p><i>CM/ECF Civil And Criminal Administrative Procedures Manual, Signatures: Affidavits of Service, 2. Criminal Cases (p.6)</i></p>	<p>Unspecified</p>	<p>Clerk's Office²⁴</p>	<p>No</p>

²⁴ **Note:** Certain documents that must contain original signatures other than those of a participating attorney or which require either verification or an unsworn declaration under any rule or statute, shall be filed in paper and maintained in the Clerk's Office.

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p>Nebraska <u>Civil Cases</u> Civil Local Rule 11.1 Signing of Documents. (2) Nonattorney Signature. (A) Maintenance of Original Document.</p>	Until all time periods for appeal expire	Attorney (filer)	None
<p><u>Criminal Cases</u> Criminal Local Rule 49.2 Form of Documents, (c) Signing Documents, (1) Electronic Filing, (B) Defendant or Non-Attorney Signature, (i) Maintenance of original document.</p>	Same	Same	No
<p>North Dakota <u>Civil Cases</u> <i>*Administrative Policy Governing Electronic Filing and Service, Section X. Signatures (for multiple signatures and affidavits in civil cases)</i></p> <p>* Referenced in Civil Rule 5.1(A)</p>	Until the entry of a final nonappealable judgment, or for two years, whichever is later	Attorney (filing user)	No
<p><u>Criminal Cases</u> <i>*Administrative Policy Governing Electronic Filing and Service, Section X. Signatures, (F) Defendants in Criminal Cases (for court forms containing a “/s/,” “/s” or “s/” signature block, or a digital image of the signature of a probationer)</i></p> <p>*Referenced in Criminal Rule 49.1(A)</p>	Unspecified	United States probation and pretrial services office	No
<p>South Dakota <u>Civil & Criminal Cases</u></p> <p><i>Case Management Electronic Case Filing (CM/ECF) User Manual And Administrative Procedures, Retention Requirements (p.16)</i></p> <p>Note: A document containing the signature of a defendant in a criminal case must be filed in paper form with an original written signature. (Signatures p. 13)</p>	Until five years after all time periods for appeals expire unless the Court directs that it be retained for a different period.	Filer (registered attorney)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
9th Circuit			
<p>Alaska <u>Civil Cases & Criminal Cases</u> <i>*Electronic Case Filing with CM/ECF, Attorney User's Manual (page 5 Signatures)</i></p> <p>*Referenced in Rule 5.3(b)(1)</p>	Unspecified	Attorney (filer)	No
<p>Arizona <u>Civil Cases & Criminal Cases</u> <i>*Electronic Case Filing Administrative Policies and Procedures Manual, § II.C.2 (Non-registered signatories), § II.C.4 (criminal defendants)</i> * Referenced in LRCiv 5.5(a)</p>	For the duration of the case, including any period of appeal	Attorney (filing party)	No
<p>California Central <u>Civil Cases & Criminal Cases</u></p> <p><i>L.R. 5-4.3.4 Signatures. (b)</i> Maintenance of Original Hand-signed Documents.</p>	Until one year after final resolution of the action (including the appeal, if any)	Attorney (filer)	No
<p>California Eastern <u>Civil Cases & Criminal Cases</u></p> <p>Local Rule 131(f) Non-Attorney's Electronic Signature. Note: Local Rule 131(h) Electronic Signatures on Certain Documents in Criminal Actions. Unless the procedure in L.R. 131(f) is followed, the Clerk will scan certain documents in criminal actions that require the signature of a non-attorney, upload them to the CM/ECF system, and except as otherwise provided by administrative procedures, discard the paper documents. The electronically-filed document as it is maintained on the Court's servers shall constitute the official version of that record.</p>	For one year after the exhaustion of all appeals	Attorney (filer)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>California Northern Civil Cases & Criminal Cases</u></p> <p>Civil Local Rule 5-1(i) Signatures</p>	<p>until one year after the final resolution of the action (including appeal, if any).</p> <p>Note: Except for documents signed by a criminal defendant in a criminal case, filer may attach a scanned image of the signature page of the document being electronically filed in lieu of maintaining the paper</p>	<p>Filer (attorney)</p>	<p>No</p>
<p><u>California Southern Civil Cases & Criminal Cases</u></p> <p><i>*CM/ECF Administrative Policies and Procedures Manual, § 2: Electronic Filing and Service of Documents, f. Signatures, 2. Non-Registered Signatories & 3. Criminal Defendants</i></p> <p>*Referenced in Civil Rule 5.4(f)</p>	<p>For a period of five years from the date the document is signed, or for one year after the expiration of all time periods for appeal, whichever period is greater</p>	<p>Attorney (filing party)</p>	<p>No</p>
<p><u>Guam Civil Cases & Criminal Cases</u></p> <p><i>Administrative Procedures For The Electronic Filing, Signing, Verifying, And Serving Of Civil And Criminal Documents, § III. Signatures, C. Retention Requirements</i></p>	<p>Until two (2) years after all time periods for appeals expire</p>	<p>Attorney (ECF User)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Hawaii</u> <u>Civil Cases & Criminal Cases</u></p> <p>LR100.5.4. Retention of Documents with Third Party Signatures. (December 2009)</p> <p><i>See also Civil Local Rule 10.2(e) Signatures on Declarations and Affidavits</i> (party and/or attorney must maintain the declaration or affidavit with the original signature).</p> <p>*Note: Local Rule contradicts previously enacted Procedural Rule 5.4: CM/ECF Procedural Order February 2006, Rule 5.4 Retention of Documents with Third Party Signatures.</p>	<p>until thirty-five (35) days (five weeks) after expiration of any appeal period.</p> <p>until 30 days after expiration of any appeal period.</p>	<p>Attorney (ECF User)</p>	<p>No</p>
<p><u>Idaho</u> <u>Civil Cases & Criminal Cases</u> Civil Rule 5.1 Electronic Case Filing, (e) Retention of Conventionally Signed Documents.</p> <p><i>See also for slightly different language in retention period—Electronic Case Filing Procedures, 19. Retention of Conventionally Signed Documents by Parties</i></p>	<p>For a period of not less than the maximum allowed time to complete any appellate process, or the time the case of which the document is a part, is closed, whichever is later</p> <p>For a period of not less than the maximum allowed time to complete any appellate process, or the time the case or adversary proceeding of which the document is a part, is closed, whichever is later</p>	<p>Attorney (filing party)</p> <p>Attorney (filing party)</p>	<p>No</p>
<p><u>Montana</u> *Unable to locate a local rule(s), standing order or procedural rule that addresses signatures of non-filing users</p>			

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Nevada</u> <u>Civil & Criminal Cases</u> <i>Special Order #109 In re Authorization For Conversion To Case Management/Electronic Case Filing (CM/ECF), Electronic Filing Procedures, V. Signatures, C. Non-Filing User Signature & VIII. Retention Requirements</i></p>	<p>For the duration of the case and any subsequent appeal</p>	<p>Attorney (Filing User)</p>	<p>No</p>
<p><u>Northern Mariana Islands</u> <u>Civil Cases</u> <i>*Appendix A Administrative Procedures for Electronic Filing and Electronic Service, 10. Document Retention</i> <i>*referenced in LR 5.1a - Electronic Filing</i></p>	<p>until the expiration of the time for filing a timely appeal, and until 30 days after all appeals have been concluded</p>	<p>Attorney (Filing User)</p>	<p>No</p>
<p><u>Criminal Cases</u> same</p>	<p>until the expiration of the time for filing a timely appeal, and until 30 days after all appeals have been concluded, and in criminal matters until the length of the defendant's criminal sentence (if any) has elapsed</p>	<p>Attorney (Filing User)</p>	<p>No</p>
<p><u>Oregon</u> <u>Civil Cases & Criminal Cases</u> Civil LR 100-11 Retention Requirements <i>See also CM/ECF User Manual, § 4 (same as local rule)</i></p>	<p>Until the later of the final disposition of the case, including appeal or expiration of the time for appeal; or, the expiration of any relevant statute of limitations</p>	<p>Attorney (Registered User)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<u>Washington Eastern</u> <u>Civil Cases</u> <i>Administrative Procedures for Electronic Case Filing (Civil Cases) § II.C. 4. Retention of Original Documents (original signatures) (p.14)</i>	Until two years after all time periods for appeals expire	Attorney (filer)	No
<u>Criminal Cases</u> <i>Administrative Procedures for Electronic Case Filing (Civil Cases) § II.C. 4. Retention of Original Documents (original signatures) (p.13)</i>	Same	Same	No
<u>Washington Western</u> <u>Civil & Criminal Cases</u> <i>Electronic Filing Procedures For Civil And Criminal Cases, § Iii. Filing Documents Electronically, L. Signatures and Attorney Appearances (p.9)</i>	For the duration of the case, including any period of appeal	Attorney (Filing party)	No
10th Circuit			
<u>Colorado</u> <u>Civil Cases</u> <i>Electronic Case Filing Procedures (Civil Cases), Rule 1.3. D. Filer Required to Maintain Certain Documents.</i>	Until two years after all time periods for appeal expire and all appeals are final	Attorney (filer)	No
<u>Criminal Cases</u> <i>Electronic Case Filing Procedures (Criminal Cases), Rule 1.3. D. Filer Required to Maintain Certain Documents.</i>	Until two years after all time periods for appeal have expired, all appeals are final, or the completion of the sentences of all defendants, whichever is later	Attorney (filer)	No
<u>Kansas</u> <u>Civil & Criminal Cases</u> Civil Local Rule 5.4.7 Retention Requirements Criminal Local Rule 49.7 Retention Requirements (same)	Until 6 years after all time periods for appeals expire	Attorney (Filing User)	No

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>New Mexico</u> <u>Civil & Criminal Cases</u> <i>CM/ECF Administrative Procedures Manual, Rule 6(c) Retention of Verified Documents.</i></p>	<p>For not less than (a) one year after the maximum allowed time to complete appellate proceedings, or (b) one year after the case is closed, whichever is later</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Oklahoma Eastern</u> <u>Civil & Criminal Cases</u> <i>*CM/ECF Administrative Guide of Policies & Procedures, § III.D.3. Non-User Signature</i> <i>*Referenced in LCvR 5.1</i></p>	<p>Until all appeals have been exhausted or the time for seeking appellate review or any other post-conviction relief has expired</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Oklahoma Northern</u> <u>Civil Cases & Criminal Cases</u> <i>*CM/ECF Administrative Guide Of Policies & Procedures, XII.C. Non-User Signature.</i> <i>*Referenced in LCvR 5.1 & LCrR49.3 (same)</i></p>	<p>until all appeals have been exhausted or the time for seeking appellate review has expired</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Oklahoma Western</u> <u>Civil Cases & Criminal Cases</u> <i>*ECF Policies & Procedures Manual, § II.C.3. Non-Attorney Signature. (August 4, 2009)</i> <i>*Referenced in LCvR 5.1</i></p>	<p>until all appeals have been exhausted or the time for seeking appellate review has expired</p>	<p>Attorney (filer)</p>	<p>No</p>
<p><u>Utah</u> <u>Civil Cases</u> <i>*District Of Utah CM/ECF and E-filing Administrative Procedures Manual, § II.A.3. Non-Attorney Signatures.</i> <i>*Referenced in DUCivR 5-1(a)</i></p>	<p>Until all appeals have been exhausted or the time for seeking appellate review has expired</p>	<p>Attorney (filer)</p>	<p>No</p>

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<u>Utah</u> <u>Criminal Cases</u> <i>District Of Utah CM/ECF and E-filing Administrative Procedures Manual, § II.A.4. Signatures in Criminal Cases</i>	Unspecified	Clerk	No
<u>Wyoming</u> <u>Civil & Criminal Cases</u> <i>*CM/ECF Administrative Procedures Manual, § II.K. Official Files and Records, iii. Filer Required to Maintain Certain Documents (p. 9)</i>	Until two years after all time periods for appeal expire and all appeals are final	Attorney (filer)	No
11th Circuit			
<u>Alabama Middle</u> <u>Civil Cases</u> <i>*Civil Administrative Procedures For Filing, Signing, and Verifying Pleadings and Documents in the District Court Under the Case Management/Electronic Case Files (CM/ECF) System (Rule II.C.2)</i> <i>*Referenced in M.D. Ala. LR 5.3(b)</i>	Two (2) years after final resolution of the action, including final disposition of all appeals	Attorney (filer)	No
<u>Criminal Cases</u> <i>*Criminal Administrative Procedures For Filing, Signing, and Verifying Pleadings and Documents in the District Court Under the Case Management/Electronic Case Files (CM/ECF) System (Rule II.C.2)</i> <i>* Referenced in M.D. Ala. LR 5.3(b)</i>	Unspecified time period	Clerk of Court	No
<u>Alabama Northern</u> <u>Civil Cases</u> <i>*Civil Administrative Procedures For Filing, Signing, and Verifying Pleadings and Documents in the District Court Under the Case Management/Electronic Case Files (CM/ECF) System (Rule II.C.2)</i> <i>*Referenced in LR 5.3</i>	one (1) year after exhaustion of time to appeal final resolution of the action, or issuance of mandate from the Court of Appeals	Attorney (filer)	No, but electronic filing must include a certificate that filer holds the original signature document.

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Alabama Northern Criminal Cases</u> <i>*Criminal Administrative Procedures For Filing, Signing, and Verifying Pleadings and Documents in the District Court Under the Case Management/Electronic Case Files (CM/ECF) System (Rule II.C.2)</i></p> <p>*Referenced in LR 5.3</p>	At least one (1) year following the expiration of all time periods for appeals, or resolution of appeals, whichever is later	Attorney (filer)	Same as civil
<p><u>Alabama Southern Civil & Criminal Cases</u> <i>Administrative Procedure for Filing, Signing, and Verifying Pleadings and Documents by Electronic Means (Rule II.C.2)</i></p>	two (2) years after final resolution of the action, including final disposition of all appeals	Attorney (filer)	No
<p><u>Florida Middle Civil Cases & Criminal Cases</u> <i>Attorney's User Manual Electronic Case Files CM/ECF</i></p>	Unspecified	Attorney (filer)	No
<p><u>Florida Northern²⁵ Civil & Criminal Cases</u> <i>*CM/ECF Attorney's User Guide (Chapter 9, Documents Requiring Original Signatures)</i></p> <p>*Note slight discrepancy with Local Rule 5.1(A)(9)</p>	For a period of two years or until the appeal time has expired, whichever is greater	Attorney (filer)	No
<p><u>Florida Southern Civil & Criminal Cases</u> <i>CM/ECF Administrative Procedures, § 3, J(2) Documents Requiring Original Signatures</i></p>	For a period of one year after final resolution of the action, including final disposition of all appeals	Attorney (Filing User)	No

²⁵ **Local Rule 5.1(A)(9)** electronic filing of a document which contains a statement, declaration, verification, or certificate which is under oath or under penalty of perjury, has the same effect as a paper document with an original signature. By filing such a document, the Filing User certifies that the original signed paper document, signed under oath or penalty of perjury, is in the possession of the Filing User. The Filing User shall make the original document available for inspection and copying upon request by a party or by the Court, and shall retain the original document for two years after the termination of the case.

District Court/Civil and Criminal Local Rule or Procedure	Retention Period for Wet Signatures	Who Retains?	Is Declaration Filed?
<p><u>Georgia Middle</u> <u>Civil & Criminal Cases</u> <i>*CM/ECF Administrative Procedures For Filing, Signing, And Verifying Documents By Electronic Means, Electronic Signatures (p. 8-9)</i></p> <p>*Referenced in Local Rule 5.0(a)</p>	For two (2) years after the expiration of the time for filing a timely appeal	Attorney (filer)	No
<p><u>Georgia Northern</u> <u>Civil Cases & Criminal Cases</u> <i>*Standing Order In Re: Electronic Case Filing Standing Order No. 04-01 And Administrative Procedures (App. H-4, #16)</i></p> <p>* Referenced in LR 5.1.A(1).</p>	For a period ending two (2) years after expiration of the time for filing a timely appeal	Attorney (filer)	No
<p><u>Georgia Southern</u> <u>Civil & Criminal Cases</u> <i>*Administrative Procedures For Filing, Signing, And Verifying Pleadings And Papers By Electronic Means, § II.A.1(f)(2)</i></p> <p>*Referenced in LR 5.5</p>	For at least five (5) years after the conclusion of an appeal or the expiration of the time for filing a timely appeal	Attorney (filer)	No
DC Circuit			
<p><u>District of Columbia</u> <u>Civil & Criminal Cases</u> <i>Electronic Case Filing User's Manual, Signatures (p.15)</i></p>	Unspecified	Attorney (filer)	No

APPENDIX D

MEMORANDUM FROM LISA TRACY, ESQ., EXECUTIVE OFFICE OF U.S. TRUSTEES

MEMORANDUM

To: Dr. Molly Johnson, Senior Research Associate, Federal Judicial Center

Date: December 10, 2012

RE: Request for Input Regarding Use of Electronic Signatures in Bankruptcy Filings by Non-Registered CM/ECF Users

Following the submission of your November 7, 2012, inquiry regarding the use of electronic signatures, the Executive Office for United States Trustees contacted each regional United States Trustee regarding potential changes to the Federal Rules of Bankruptcy Procedure that apply to electronic signatures of non-registered CM/ECF users and solicited their input. Specifically, each United States Trustee was asked to respond to the following questions:

- How, if at all, any proposed alternative would negatively impact your local jurisdiction's current course of practice;
- Whether you have recommendations regarding what the national rule should be; and
- Whether you have experienced any specific wet signature issues in your local practice that, when summarized, would benefit the Federal Judicial Center as it considers this matter.

What follows is a rough summary of the responses received, as well as some additional information gleaned from the United States Trustee's responses that might be pertinent to the inquiry. It is not intended to set forth any official United States Trustee Program position regarding your inquiry, or the various areas of the law your inquiry might affect.

Summary of United States Trustee Responses:

The overwhelming majority of United States Trustees who responded prefer alternative "D" identified in your inquiry.²⁶ Among other things, the United States Trustees believe that alternative "D" represents the best approach because many Clerks' Offices already have similar requirements in place, so standardizing the practice of specifying a retention period for hand signed documents would be the least disruptive for all parties. Further, United States Trustees supporting alternative "D" believe that the ability to retain hand signed documents significantly advances their office's statutory mandate to prevent, both in the civil and criminal context, fraud and abuse in the bankruptcy system. Finally, certain United States Trustee offices, while favoring alternative "D,"

²⁶ Alternative "D" would establish a national rule specifying the retention period for hard copy documents with manual signatures.

also believe that it would be helpful to require non-registered CM/ECF users, and in particular individuals appearing on a *pro se* basis, to electronically submit a scanned pdf copy of the original signature page of any corresponding document filed with a court. Suggested retention periods for hand signed documents ranged from one to seven years.

Attached, as Appendix A, is a chart, divided by United States Trustee Program region, indicating the ranked preferences for each alternative identified in your inquiry.

Possible Additional Implications of Proposed Rule:

Based upon the responses received from each United States Trustee, there appears to be a concern that the alternative approaches identified in your inquiry also potentially affect two important areas of interest to the United States Trustee Program. First, there appears to be a concern that criminal prosecutions might be affected. Second, there appears to be a concern that civil enforcement remedies, involving certain parties who may engage in abusive conduct in the course of a bankruptcy case, might be affected. Each concern is discussed below.

1. Potential Effect on Criminal Prosecutions.

United States Trustees have a duty to notify United States Attorneys of any action that may constitute a crime under the laws of the United States. 28 U.S.C. § 586(a)(3)(F). Crimes affecting the bankruptcy system include, *inter alia*, making a false oath, false declaration, or false statement, and presenting a false claim. 18 U.S.C. §§ 152(2), (3), and (4). Various documents filed in a bankruptcy case can serve as the vehicle for the commission of these crimes. Accordingly, to the extent the Advisory Committee is considering adopting a rule whereby documents containing a party's hand signature (whether wet or a copy thereof) are not retained, United States Trustees appear concerned that criminal prosecutions might be affected.²⁷

A hand signature constitutes a form of proof that a person has read and verified the information contained in a signed document. Absent this proof, some United States Trustees expressed concern that criminal prosecutors may find it difficult to meet their burden of establishing criminal conduct, including intent, in a bankruptcy case. Indeed, anecdotal information provided by United States Trustees indicates that in certain jurisdictions, criminal prosecutors will summarily decline to prosecute even the strongest of cases when documents containing a party's hand signature are not available. Therefore, given the current lack of settled law on the question of the evidentiary effectiveness of an electronic signature,²⁸ United States Trustees appear concerned that Alternative "A" identified in your inquiry²⁹ could potentially affect criminal prosecutions arising out of the bankruptcy

²⁷ We encourage you to contact both the Department's Criminal Division and the United States Attorneys regarding this survey given their obvious expertise in the area of criminal law, and we understand that you may have already done so.

²⁸ We are aware of only a handful of unpublished trial level decisions on this issue. *See United States v. Hyatt*, No. 06-00260, 2008 WL 616055 at *3 (S.D. Ala. March 3, 2008) (collecting decisions and finding that no evidence of a hand signature is required to establish criminal conduct in a bankruptcy case). We are not aware of any decisions arising out of the Courts of Appeal or the Supreme Court on this issue.

²⁹ Alternative "A" would establish a national rule specifying that an electronic signature of a non-registered user in the CM/ECF system is *prima facie* evidence of a valid signature.

system.

2. *Potential Effect on Parties Engaged in Abusive Conduct.*

To the extent the Advisory Committee is considering adopting a rule whereby documents containing a party's hand signature (whether wet or a copy thereof) are not retained, United States Trustees appear concerned that the ability to combat abusive conduct in bankruptcy might be affected.

For example, anecdotal information provided by some United States Trustees indicates that in some cases challenges to a debtor's ability to receive a discharge under 11 U.S.C. § 727(a)(4)(A) have been met with the claim that the debtor never signed the document providing the basis for the challenge, or did not sign the version of the document that was filed. Often these claims prove to be without merit once the United States Trustee receives a copy of the document because that copy routinely confirms that the debtor actually signed the document. Under these circumstances, the copy serves as crucial evidence in establishing the debtor's wrongful conduct. However, if such documentary evidence is not available, because its retention is not required, United States Trustees and others would have no method to rebut a debtor's claims that she never signed a document, or did not sign the version of a document that was filed.

Further, in the view of some United States Trustees, the answer to this unnecessary risk cannot lie in specifying that an electronic signature constitutes *prima facie* evidence of a valid signature, as Alternative "A" would do. *Prima facie* evidence can, on occasion, be overcome by convincing testimony. Second, in the event an unscrupulous individual files unauthorized papers on behalf of an unknowing debtor,³⁰ labeling an electronic signature as *prima facie* evidence of a valid signature would place the unknowing debtor in the position of having to prove that the electronic signature is invalid. In the view of many United States Trustees, neither of these results is satisfactory. Accordingly, for all of these reasons, the United States Trustees appear concerned that Alternative "A" identified in your inquiry might potentially affect the ability to stem abuse in the bankruptcy system.

We hope this summary of the United States Trustees' views regarding potential changes to the Federal Rules of Bankruptcy Procedure that apply to electronic signatures of non-registered CM/ECF users is useful. Please contact us at (202) 307-1399 if you have any questions or if there is any additional information we can provide to assist you.

³⁰ See, e.g., *Briggs v. Labarge, Jr. (In re Phillips)*, 433 F.3d 1068 (2006) (concluding that attorney who electronically filed chapter 13 bankruptcy petition on client's behalf, without ever speaking with her to make sure that she wanted to file the petition, and without verifying that facts in second petition remained correct, violated Fed. R. Bankr. P. 9011).

**Ranked Preferences for Each Alternative
Identified in Inquiry – Divided by United States Trustee Program Region**

USTP REGION	ALT. A	ALT. B	ALT. C	ALT. D
1		1		2
2				1
3*				
4				1
5		1		2
6	1			2
7			2	1
8*				
9				1
10				1
11			2	1
12				1
13				1
14				1
15				1
16				1
17			2	1
18				1
19				1
20*				
21				1

* Denotes no response received from the United States Trustee Program region.

Appendix E

Comments from NABT members on Proposed Rule Changes re: Wet Signatures and Retention of Signed Documents

Respondent 1

Dear Ms. Johnson,

I'm responding to your request for comments on handling of electronic signatures forwarded through the NABT. I am a chapter 7 trustee practicing in Massachusetts, and am also the author of *Bankruptcy and Secured Lending in Cyberspace*, a legal treatise published by West|Thompson on the impact of technology on bankruptcy law and practice.

A. A key problem I see with electronic signatures of non-filers is that in some cases the wet signature either does not exist or has a different date than the related electronic signature. I have even run across a couple of cases where the debtor did not even review the documents containing the signature. For example, in one recent case when the debtors' first case was dismissed due to attorney error, the attorney simply changed the dates on the signed documents and refiled them - three months later. I have another case going on now where the petition was filed on October 18, and the wet signature on the petition is dated October 22.

These kinds of events often go hand in hand with poor representation by counsel. Wet signature requirements play a hand in policing attorney behavior, as well as making sure that the debtors actually review and sign documentation.

Another issue goes to the idea of burden of proof. It's easy to say that the person challenging validity of a signature has the burden of proof, but the person challenging validity is often the person who signed. If they testify that they did not sign, and they did not create the electronic signature themselves (and, of course, they never do - the filer usually does) then absolutely no evidence exists to prove the signature. The evidence will usually come down to testimony and in many cases the only testimony will be that of the signatory.

Finally, a /s/ signature of a non-filer is not, strictly speaking, a proper electronic signature under the UETA or similar statutes because there is no act by the signatory in producing it. All action is taken by a third party. Absent use of a true electronic signature process, the evidence of execution is needed and should be retained.

B. You might consider having the UST hold signature packages instead. I would have to say that the courts, and the UST, are trying to go electronic. This obviously creates an added cost for both debtor's counsel and whomever has to retain the documents.

My suggestion would be a requirement that all wet signature pages be scanned and efiled, with a national retention period for the wet signatures. Preferably a shorter one, within the usual retention periods for attorney case files. Perhaps three years from case closure. The electronic scans should serve as appropriate evidence of execution under the best evidence rule and an indefinite retention period would, of course, apply to the scanned documents.

C. The problems with the declaration of electronic filing as the sole source of execution are as follows:

It often gets signed before other documents. Some attorneys even have debtors sign it when they first visit the attorney. How can you make these declarations before you sign the documents?

They are, more frequently than you might imagine, undated.

Again, there is no advantage to having the court handle originals. A scan really should suffice.

Respondent 2

Option C

Respondent 3

Dear Dr. Johnson,

The real problem with allowing debtors to use electronic signatures is that their attorneys too often abuse this privilege and file things without their client's knowledge. Sadly, many debtors never see or review most documents filed on their dockets by their attorneys, despite the fact that filing these documents is the equivalent of them swearing (via an electronic signature) under penalty of perjury.

This reality creates huge problems for the courts and trustees trying to prevent fraud. In my experience, debtors will always blame their attorneys for any mistakes found in their petitions ("I told my attorney about it but he forgot to list it"). Thus, as it now stands today, all electronic signatures are only, at best, prima facie evidence of a valid signature. Moreover, there is no way for anyone to prove that the wet signature which the attorney has on file actually was signed by the debtor before the documents were submitted. Too often, attorneys will routinely have their clients sign those pages back when the client first fills out an informational packet. The attorney later has a staff person type the contents of that packet into Best Case, which transforms the information into a petition.

That petition is then filed electronically through Best Case, all without the client ever seeing the finished copy he swears is accurate.

Debtors do not understand how the process works and trust their attorneys not to make mistakes. Alternatively, debtors use their attorneys as a convenient scapegoat for explaining why information which should have been disclosed was not hidden intentionally.

As such, all of the approaches (A-D) that you are considering will fail to hold debtors accountable for the contents of their petitions.

The only solution that will work is to have a rule which requires the debtors to initial every page of their petition (including any amendments) before it is filed on ecf. Then there is no way for the debtors to say that they did not mean to file what was filed. Additionally, if the debtors initialed every page, there would be no need for the attorney or the court to keep a wet signature.

Frankly, a digital copy of the petition (scanned and then uploaded on the docket with a person's actual signature or initials) is every bit as good as a wet one; it's highly unlikely that attorneys will forge their clients' signatures. This policy would also be consistent with the contract law principles that debtors already understand—if you sign it, you are accountable for its terms (whether you read it or not!).

The only people who might complain about requiring initials are attorneys who run bankruptcy mills, who are already cutting corners. After all, this would require an attorney to print out and give his clients at least one paper copy of their petitions (which they could keep in case they need them after discharge)—clients would then be responsible for signing the documents and making sure the attorney had one scanned digital copy of each (either returned by the client via email/fax or scanned by the attorney at his office). The attorney could still use Best Case for everything other than filing the petition, which would instead be done by logging into ecf.

While it is necessary/useful for attorneys to use electronic signatures for themselves, nothing good comes from letting debtors do the same. Debtors need a system that forces them to be accountable, not one that makes the attorney responsible for mistakes. The attorney is given this burden of getting real signatures and initials on each page in return for being let off the hook for liability.

It is a fair trade. And it is good for the system, as it will make debtors think hard about what they put on every page of their petitions. Instead of adopting national rules regarding signatures of non-registered CM/ECF users and retention requirements, stop letting non-registered CM/ECF users use electronic signatures. It is unnecessary (they are not repeat players in the system) and fails as evidence.

Those are my thoughts. Hope they are helpful.

Respondent 4

My preferred Option in C, the B, then A. If attorneys retain the wet copy, the period should be no more than 1 year after the case is filed. We scan all bankruptcy cases when the case is closed at the court and shred all paper.

Respondent 5

Ms. Johnson-

I read about your survey and am responding. I am a chapter 7 trustee and have held 341 hearings in approximately 10,000 cases. One current requirement is that I have to verify "wet" signatures.

Provided there is a requirement that the practitioner retain the wet signature as long as the case is open, I would not personally be opposed to destruction of that document once the case is closed. However, it has been my experience that practitioners regularly do not obtain all necessary signatures on documents, and in the event an issue arose whether a debtor actually signed a document or not, it seems to me the debtor's attorney should have to provide the original signature, at least until such time as the case is closed.

I have some attorneys who scan, in color, the blue-inked signatures, and I accept those at 341s. It seems that is another possible option for the retention (in some form) of the document.

Respondent 6

I would like D to be adopted with a one-year retention. Unfortunately, there is an attorney in my district that does not think his clients need to review the petition, schedules, financial affairs before filing and sign these documents with a wet signature. I have reported his practice to the US Trustee with proof. If no retention is required, you will be telling this attorney that his practice of not having his clients review and sign documents is OK.

Respondent 7

I think that option A is problematic because it does not seem to contemplate an original signature somewhere in the chain of documents. However, I do like the concept of not having to maintain an original signature in a file for an extended period of time after a case is closed and believe that filing a document with the Court that contains an original signature should be sufficient.

In Massachusetts, local rules govern electronic filing by registered and non-registered users. Statements under oath by non-registered users must be accompanied by a Declaration of Electronic Filing (sample attached) that is signed manually and contains some, but not all of the information set forth in your option C.(see Rule 7) The local rules also require attorneys to retain the Declaration of Electronic Filing for 5 years. I favor the approach in option A – that the filed Declaration should be sufficient and attorneys should not be required to retain the original so I guess I am advocating a combination of Option A and C. I do not favor option D and I think option B simply shifts the storage problem from the attorneys to the Court.

TAB 11

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TAB 11.1

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Comments on amendments to Rule 1014(b)

Item 11.1 will be distributed separately.

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TAB 11.2

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: TROY A. MCKENZIE, ASSISTANT REPORTER
RE: COMMENTS ON PUBLISHED AMENDMENT TO RULE 7004(e)
DATE: MARCH 13, 2013

The Advisory Committee has received four comments on the amendment to Rule 7004(e) that was published for public comment in August 2012. The amended rule shortens the time during which a summons is valid and must be served from 14 days to 7 days after its issuance. The concern prompting the amendment is that a 14-day delay before service of a summons may unduly limit the defendant's time to answer, which is calculated under the Bankruptcy Rules from the date the summons issues and not (as is the case under the Civil Rules) the date it is served.

Each of the comments raises essentially the same issue—that a 7-day window to serve a summons may be too short in some circumstances. The comments suggest keeping the current 14-day service period and either lengthening the time for the defendant to respond under Rule 7012 or, in the alternative, substantially overhauling Rule 7004.

The possibility that a 7-day service window may be inadequate in certain cases was anticipated by the Advisory Committee. The Subcommittee on Business Issues explained in its February 27, 2012, memorandum, which recommended that the Advisory Committee seek publication of the amendment to Rule 7004(e), that a longer period of time might be needed in some circumstances. Those circumstances, however, were considered to be infrequent and, if they did arise, were thought to be best handled through a request for an enlargement of time

under Rule 9006. The comments do not suggest that the Advisory Committee was mistaken in those considerations.

Accordingly, the text of Rule 7004(e) should be approved as published. I recommend, however, that the Committee Note accompanying the amendment be altered to make explicit reference to the possibility of a request for enlargement of time under Rule 9006.

Comments

1. Bradley R. Tamm (Attorney, Honolulu, Hawaii) (12-BK-001)

The shortened time is sufficient in circumstances when service can be effected by mail. Sometimes, however, service must be effected by hand delivery, such as when an individual's only address is a post office box (as with many rural addresses). Seven days will often be insufficient and will lead to situations where the summons must be reissued multiple times. Instead of shortening the summons service window in Rule 7004(e), the defendant's time to respond in Rule 7012(a) should be lengthened. That period could be increased from 30 days to 45 days, or the government's 35-day period to answer could be applied to all parties.

2. Insolvency Law Committee of the Business Law Section of the State Bar of California (12-BK-031)

Service within 7 days may be onerous under certain circumstances. Some judges require service of a scheduling order, which may not issue until days after the case is filed and the summons is issued. We recommend keeping the 14-day window and revising Rule 7012(a) to provide the defendant with 28 days to respond after service of the summons and complaint.

3. Chief Judge Christopher M. Klein (Bankr. E.D. Cal.) (12-BK-033)

Rule 7004(e) is dysfunctional, and reducing the service window from 14 to 7 days will only make the existing problems worse. The published amendment will increase the likelihood of stale summonses. Service of a stale summons increases delay by prolonging an adversary proceeding while a new summons is issued and served. Because the “limited life” summons under the Bankruptcy Rules is out of step with practice in federal district court and state court, where a summons typically does not expire, general practice lawyers and pro se parties fall into a trap for the unwary. The “bankruptcy is different” mentality is an unnecessary barrier to entry for non-bankruptcy specialists and gives bankruptcy a bad name in the general legal community.

These bankruptcy-specific service provisions date back to the era of the Bankruptcy Act, when the Civil Rules lacked a time limit for service. The Civil Rules now contain a time limit for service under Rule 4(m), and the Bankruptcy Rules should reflect that change. The Rules Committee should (1) delete the time limit on the validity of the summons under Rule 7004(e); (2) amend Rule 7012(a) to mirror the times in Civil Rule 12(a); and (3) alter the Civil Rule 4(m) time limit (incorporated by Bankruptcy Rule 7004(a)) to less than the 120 days in the Civil Rule.

4. Daniel Press (Attorney, McLean, Virginia) (12-BK-041)

In most cases, counsel should be able to serve the summons and complaint by mail within 7 days. If, however, an unrepresented plaintiff, or one whose lawyer is not a registered electronic filer, receives the summons by mail from the clerk, some or all of the 7-day window will expire, making it impossible to make timely service. In addition, not all domestic summonses can be served by mail, such as where the only known address is a post office box or

where the recipient has no “dwelling house or usual place of abode” or business address. Service within 7 days may be impossible in such situations.

The rule should be amended to allow service by mail to post office boxes, or there should be a different time period specified for service that is not made by mail. Also, although Rule 7004(e) does not include service under Civil Rule 4(j)(1) (service on foreign governments or agencies) an express exception should be included.

Response to Comments and Recommendation

The comments present two scenarios in which a 7-day window for serving a summons may be insufficient. The first is when the intended recipient of the summons does not fall within a category of persons who may be served by mail under Rule 7004(b)(1)—that is, an individual whose mailing address is not a “dwelling house or usual place of abode or . . . the place where the individual regularly conducts a business or profession.” As Mr. Tamm and Mr. Press correctly observe, service on a defendant with only a post office box, for example, cannot be effected by mail under Rule 7004(b)(1). The additional time required to serve the summons by some other method may extend beyond the 7-day window of the published rule amendment. The second scenario in which that window may be insufficient is if the summons does not issue electronically or the serving party must await some other court action (such as the issuance of a scheduling order) before service. As Mr. Press’s comment points out, a summons may issue by mail to a pro se plaintiff or to an attorney who is not a registered electronic filer. The additional time between issuance of the summons and its receipt by the serving party may leave a very short period of time for service of the summons.

The comments suggest remedies for these scenarios that would depart from the approach adopted by the Advisory Committee. The Advisory Committee sought to make the least disruptive change that would ensure sufficient time to serve, and respond to, a summons. In acting upon the Business Subcommittee's recommendation, the Advisory Committee rejected an alternative amendment to Rule 7012 that would lengthen the defendant's time to answer. As the Business Subcommittee observed, that approach would not serve the need to expedite proceedings in bankruptcy. The Advisory Committee also declined to make more extensive changes to Rule 7004, such as adopting the Civil Rules' method of calculating the defendant's time to respond (that is, from the service, and not the issuance, of the summons). In addition, the published amendment, although reducing the time to serve a summons under Rule 7004(e), is close to the 10-day period that prevailed before that period was lengthened by the Time-Computation Project. Perhaps these comments are worthy of a broader project to harmonize the Bankruptcy and Civil Rules with respect to issuance and service of the summons and complaint. But that project is beyond the scope of the published amendment.

The Advisory Committee may wish to alter the Committee Note accompanying this amendment to highlight the availability of an enlargement of time under Rule 9006 in circumstances such as those raised in the comments. The use of Rule 9006 was contemplated by the Advisory Committee, and an explicit reference to that rule in the Committee Note would allay some of the concerns raised by the comments.

I have suggested additional language for the Committee Note below.

COMMITTEE NOTE

Subdivision (e) is amended to alter the period of time during which service of the summons and complaint must be made. The amendment reduces that period from fourteen days to seven days after issuance of the summons. Because Rule 7012 provides that the defendant's time to answer the complaint is

calculated from the date the summons is issued, a lengthy delay between issuance and service of the summons may unduly shorten the defendant's time to respond. The amendment is therefore intended to encourage prompt service after issuance of a summons. If service of the summons within seven days is impracticable, a court retains the discretion to enlarge that period of time under Rule 9006(b).

TAB 11.3

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

RE: COMMENTS ON PROPOSED AMENDMENTS TO RULES 7054 AND 7008 RELATING TO ATTORNEY'S FEES

DATE: MARCH 13, 2013

On the Committee's recommendation, the Standing Committee in August published proposed amendments to Rules 7054 and 7008¹ that would change the procedure for seeking attorney's fees in bankruptcy proceedings. The Committee proposed the amendments in order to clarify and to promote uniformity in the procedures for seeking an award of attorney's fees. Rule 7054 would be amended to include much of the substance of Civil Rule 54(d)(2). Rule 7008(b), which currently addresses attorney's fees, would be deleted. By bringing the bankruptcy rules into closer alignment with the civil rules, the amendments would eliminate a potential trap for an attorney, particularly one familiar with the civil rules, who might overlook the Rule 7008(b) requirement to plead a request for attorney's fees as a claim in the complaint, answer, or other pleading. As under the civil rules, the procedure for seeking an award of attorney's fees would be governed exclusively by Rule 7054, unless the governing substantive law requires the fees to be proved at trial as an element of damages.

Comments

Two comments were submitted on these amendments. The States' Association of Bankruptcy Attorneys ("SABA") submitted comment 12-BK-010, which addressed the sentence

¹ Additional amendments to Rule 7008 that respond to the *Stern v. Marshall* decision were published in August. Comments regarding that aspect of the Rule 7008 amendments are discussed in the memorandum at agenda item 8.

in Rule 7054(b)(1) that permits the award of costs against the United States, its officers and agencies only to the extent permitted by law. SABA suggested that the provision be broadened to apply to all governmental units. The other comment was submitted by Louis M. Bubala III (12-BK-044). Mr. Bubala stated that he was “pleased especially with the proposed elimination of Rule 7008(b) and addition of Rule 7054(b)(2) regarding claims for attorney’s fees. The current rules have caused problems over the years, and the adoption of the procedure from the civil rules is a good one.”

Recommendation

I recommend that the Committee approve as published the amendments to Rules 7054 and 7008 relating to attorney’s fees. SABA’s comment regarding governmental units addresses a sentence that is in the current rule and has not been proposed for amendment. The sentence tracks the language in Civil Rule 54(d)(1).

TABS 12-16

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Attorney Conduct and Health Care
Suggestions 13-BK-A, 13-BK-B, 12-BK-M, and 13-BK-C

Items 12 – 16 will be oral reports.

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TAB 17

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
BOSTON, 02210

WILLIAM G. YOUNG
DISTRICT JUDGE

Honorable David Bryan Sentelle
Chief Judge
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman
United States Courthouse
333 Constitution Avenue, N.W., Room 5108
Washington, DC 20001

November 30, 2012

Dear Chief Judge Sentelle and Members of the Executive Committee,

Nearly thirty years ago when I had just recently embarked on federal judicial service my first Courtroom Deputy Clerk, Kate Hart Duffy, told me this: "Judge," she said, "your great strength and your great weakness is that you will hold court in a parking lot!" As the years passed I came to realize just how accurate and profound was this insight.

Now we are engaged in a great exercise seeking to determine how we can continue to do justice with less and less in these extraordinary times. It is altogether fitting and proper that we do this and your efforts to engage the entire judiciary in a fully transparent process are right on. I have dutifully returned the questionnaire and expressed my views. While our collective ability resiliently to carry on in the face of unreasonable spending cuts is our great strength, it is also our greatest weakness since everything we voluntarily give up we shall never see again in this generation and we may irretrievably weaken ourselves as a fully functional independent branch of government.

I write separately to suggest the advantages of developing a complimentary analysis clearly to delineate those core constitutional functions of the judiciary that, due to the commands of the Constitution, are simply beyond the vagaries of the budget process. The salaries of the Article III judiciary are the prime example.

But surely there is more.

The American jury: Our Constitution makes clear that it is the right of each citizen to serve on the nation's juries. Jury trials are a vital expression of direct democracy. They are like small special elections that resolve a particular matter. It cannot be that Congress could suspend elections because we're out of money to print ballots. At a bare minimum then, it follows that

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when a jury case is ripe for adjudication, there must be present a judge to teach the law, a courtroom deputy clerk, a court reporter, a courtroom and jury room (even colonial courthouses had that), a jury commissioner to obtain the jurors, and a minimal infrastructure (heat, phones, postage, summonses, etc.). That's about it, although we can argue that there ought be much more.

The judicial power to adjudicate: As Chief Justice Marshall explained in Marbury, "It is emphatically the province and duty of the judicial department to say what the law is." If this constitutional bedrock is more than shifting sand, it must mean at a minimum, that an Article III judge may conduct the judicial proceedings necessary to "say what the law is." Thus, she must have a courtroom deputy clerk, court reporter, and courtroom whenever necessary as well as the same minimal infrastructure to deal with litigants and counsel. Of course we would argue that at least we also need law clerks, legal research materials, and secretaries to make it all work but, as one who started as state court trial judge, I can attest that none of these things is absolutely essential.

My point is not that we're truly likely to be cut back to holding court in parking lots. That's not in the cards. My point is that there is a small central core of our activities that cannot be denied us through the budget process if we are to remain an independent branch of government. (Of course Congress has the final word. It can eviscerate our jurisdiction, turn permanent judgeships into temporary ones so that as we die off there are fewer judgeships, and even disband the lower courts - but **not** as an incident of the budget process.)

The principal practical relevance of such an analysis lies in how it affects our own rhetoric. Here are two examples:

Immediately following the last judicial conference it was announced that should sequestration take place we would have to curtail jury trials. (In fairness, this was quickly amended to say - accurately - we would have insufficient funds to pay jurors.) We are not going to curtail jury trials, nor are we going to delay them due to inadequate funding. To do so would be to disenfranchise our people and violate our oath. Instead, we shall forge ahead with such trials day by day. In the early days of the republic we did not pay our jurors and, if necessary, we can do it again.

Second, I read in the National Law Journal that if we go off the fiscal cliff one district court is considering shutting down one day each week. While that's their business, I suggest this is precisely the wrong response. Barring disciplinary proceedings, no one can tell an Article III judge that she cannot hold court. Thus, if we come to furloughs, we'll still have to support each judge who wishes to go out on the bench and handle judicial business. This means rolling furloughs at worst and no courtwide shutdowns. This is not a matter of court policy or votes; it is a determination each Article III judge must make on her own.

If we say we're going to stop jury trials or go to a four-day work week, the average American will respond "Ho hum, why do we need those nonessential government employees anyway?"

Far more powerful to say that everything - literally everything - will go over the side before we curtail adjudication or jury trials in any way. This emphasizes how important and essential they are to our polity.

Systemic efficiency: We are justly proud of our efforts to stretch the taxpayer dollar as far as it will go without compromising the quality of justice. Accordingly, the questionnaire seems to assume that we are already operating at peak efficiency and need to give up things nevertheless.

Systemwide, however, we are far from efficient. That is, our efforts to help out across court lines are extremely modest. Were we more aggressive in this area, we could actually improve the quality of justice nationwide at no additional cost. Actually, we would reduce costs as we would reduce the time cases languish in our system - the prime driver of operational costs. Moreover, such efforts are likely to win Congressional approval and support.

What is needed is a recognition on the part of every federal judge that he or she is an integral part of a **nationwide** system of justice, and delay and inefficiency in any court is the responsibility of every judge. We cannot mandate this recognition. We must educate, inspire, and celebrate it. Think of what we could do if all judges were imbued with such a spirit:

1. Social Security Appeals: These cases are handled on a paper record. We should amend our "visiting" judge rules so that we could move such cases among the courts, redistributing them from courts with high caseloads to low caseload courts. This requires no changes in the law. It's simple - if I am assigned a social security appeal from a court in another circuit, I decide it pursuant to that circuit's caselaw and send it back. The result - vastly improved efficiency in handling this aspect of our docket and a concomitant increase in the quality of justice as the circuit variations in applying a single statutory scheme are evened out.

2. Bankruptcy Appeals: While these cases are handled on a paper record, they require (or I think they should get) an oral hearing. Move them around the same way and handle the oral hearings via our court videoconferencing facilities. This would achieve the same beneficial results as described above.

On this point, if we're truly serious about cutting costs, we ought abolish Bankruptcy Appellate Panels root and branch. Having reviewed the Consolidated List of Cost Containment Initiatives (August 2012), I gather this is not on the table. It ought be. These panels are utterly redundant. They save neither time nor expense. It is perhaps no surprise that the most uniformly productive district courts in the nation are those of the Second Circuit, a circuit that never adopted a Bankruptcy Appellate Panel.

3. Videoconferencing civil cases: Like many district judges, I try to help out other courts by handling civil cases remotely through our videoconferencing facilities. This is a proven technology and it works wonders. Any district judge can remotely handle the pre-trial aspects of a variety of civil cases and even try jury waived cases via videoconference. This frees up the resident judges to address criminal matters and break log jams where massive summary judgement motions are slowing things down.

The cost savings are dramatic. There are no travel costs at all. The "visitor" uses her own trial team - courtroom deputy clerk, court reporter, and law clerks and folds motion or scheduling hearings seamlessly into her daily schedule. Docketing is done electronically in the home court. Even more important, the great bulk of the cases so assigned resolve by pre-trial adjudication or settlement. Only a few ever are sent back for trial.

We could (and should) step up this program ten-fold. As a long time participant, I can attest that **nothing** better teaches the best practices of other courts and inspires me with the professionalism, good sense, and fellowship of my colleagues around the country.

4. Full use of every judge: These are but a few suggestions derived from my own experience. I'm sure that there are many more better able to advance an independent judiciary. The goal must be to elicit the full use of the particular talents of every judicial officer wherever located in the service of the national system of justice. In this regard, we ought cease advising the President and the Senate every two years that we don't need judges here or there. Nothing could be more counterproductive or wrongheaded. It is a divisive policy that sets court against court and balkanizes our system rather than unifying it. It gets us nothing and frustrates our arguments for more judgeships. Indeed, how can we ask Congress for more judgeships if, at the same time, we're telling them we don't really know what to do with the ones we have now?

I hope these few comments are somewhat helpful to you as you wrestle with these massive issues. If I can assist in any way, please call on me. I wish you all the very best.

Cordially and respectfully,



William G. Young
District Judge

RECEIVED
EXECUTIVE
SUPPORT STAFF
2012 DEC -6 A 9:37
ADMINISTRATIVE OFFICE
OF THE
UNITED STATES COURTS
WASHINGTON DC 20544

cc: Hon. Thomas F. Hogan, Office of the Director, AOUSC
Hon. Jeremy Fogel, Director, Federal Judicial Center
Hon. Sandra Lynch, Chief Judge, First Circuit
Hon. Mark L Wolf, Chief Judge, District of Massachusetts

TABS 18-20

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Bankruptcy-related legislation
Section 109(h) of the Code
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Bankruptcy Rules Tracking Docket (By Rule or Form Number)

3/15/13

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
<p>Rule 1006(b) Courts may require a minimum initial payment with fee installment requests</p>	<p>Suggestion 12-BK-I Judge John Waites on behalf of the Bankruptcy Judges Advisory Group</p>	<p>6/12 - Consumer Subcommittee considered 9/12 - Committee discussed, referred to subcommittee for further consideration 11/12 - Subcommittee considered 4/13 - Committee agenda</p>	
<p>Rule 1007(b)(7) Allow financial management course provider to file notice of course completion</p>	<p>Suggestion 09-BK-I Dana C. McWay on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group</p>	<p>4/10 - Committee considered, referred to Consumer Subcommittee 8/10 - Subcommittee considered 9/10 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference approved</p>	<p>12/1/13</p>

<p>Rule 1014 Cases filed in different districts by a debtor and certain affiliates</p>	<p>Suggestion 10-BK-J Judge Linda Riegle</p>	<p>4/11- Committee discussed, referred to Business Subcommittee 6/11, 8/11 - Subcommittee discussed 9/11 - Committee approved publication 11/11 - Referred to Subcommittee for further consideration 12/11 - Subcommittee considered 3/12 - Committee approved publication of revised amendment 6/12 - Standing Committee approved publication 8/12 - Published for comment 4/13 - Committee agenda</p>	<p>12/1/14</p>
<p>Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, 9009 Amendments in connection with a chapter 13 form plan</p>	<p>Committee proposal</p>	<p>9/11 - Committee discussed 3/12 - Working group discussed 3/12 - Committee discussed 8/12 - Working Group discussed 9/12 - Committee discussed 11/12, 1/13, 2/13 - Working Group considered 1/13 - Form Plan Mini-Conference considered 4/13 - Consumer and Forms Subcommittees considered 4/13 - Committee agenda</p>	<p>12/1/15</p>
<p>Rule 2002(f)(1) Require notice of chapter 13 confirmation</p>	<p>Suggestion 12-BK-B Bankruptcy Noticing Working Group</p>	<p>3/12 - Committee discussed, referred to Consumer Subcommittee 6/12 - Subcommittee considered 9/12 - Committee discussed, referred to subcommittee for further consideration 11/12 - Subcommittee considered 4/13 - Committee agenda</p>	

<p>Rule 2002(h) In chapter 13, limit notices to creditors who have not filed a claim</p>	<p>Suggestion 12-BK-M Judge Scott W. Dales</p>	<p>4/13 - Committee agenda</p>	
<p>Rule 3002(a) Require secured creditors to file proofs of claim</p>	<p>Suggestion (11-BK-B) Judge A. Benjamin Goldgar</p>	<p>7/11 - Consumer Subcommittee discussed 9/11 - Committee discussed, referred to Consumer Subcommittee 12/11, 2/12 - Subcommittee considered 3/12 - Committee considered, deferred further action, referred to Subcommittee on Business Issues and Chapter 13 Form Plan 7/12 - Subcommittee considered 9/12 - Committee discussed, referred to Form Plan Working Group (See chapter 13 amendments to Rule 2002 etc.)</p>	
<p>Rule 3002.1 Application of rule when no cure in plan</p>	<p>Suggestion 12-BK-K Laila Gonzalez</p>	<p>9/12 - Mortgage Forms Mini-conference</p>	
<p>Rule 3002.1 Where to file notices when no proof of claim</p>	<p>Suggestion 12-BK-G Judge Thomas Saladino</p>	<p>9/12 - Mortgage Forms Mini-conference</p>	

<p>Rule 3007(a) Disposition of objections to claims by negative notice</p>	<p>Suggestion 09-BK-H Judge Margaret Dee McGarrity on behalf of the Bankruptcy Judges Advisory Group</p> <p>Comment 11-BK-12 Judge Eric L. Frank</p>	<p>1/10 - Consumer Subcommittee considered 4/10 - Committee discussed, referred to Consumer Subcommittee 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Consumer Subcommittee 12/10 - Subcommittee considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Consumer Subcommittee considered 3/12 - Committee considered, referred to Chapter 13 Form Plan Working Group 7/12 - Working Group discussed 9/12 - Committee considered comment on negative notice, referred to subcommittee 11/12 - Subcommittee considered 4/13 - Committee agenda</p>	
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<p>Rule 3007(a) Clarify service requirements for objections to claims</p>	<p>Suggestion (09-BK-N) Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group</p>	<p>4/10 - Committee discussed, referred to Consumer Subcommittee 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Consumer Subcommittee 12/10 - Subcommittee considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Consumer Subcommittee considered 3/12 - Committee considered, referred to Chapter 13 Form Plan Working Group 7/12 - Working Group discussed 9/12 - Committee discussed, referred to Chapter 13 Form Plan Working Group, included in amended Rule 3012 (See chapter 13 amendments to Rule 2002 etc.)</p>	<p>12/1/15</p>
<p>Rule 4004(c)(1) Clarification</p>	<p>Committee Proposal</p>	<p>9/11 - Committee discussed, referred to Consumer Subcommittee 12/11 - Subcommittee considered 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference approved</p>	<p>12/1/13</p>

<p>Rule 5009(b) Conform rule to amendment to Rule 1007(b)(7)</p>	<p>Committee Proposal</p>	<p>12/10 - Considered by Consumer Subcommittee 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference approved</p>	<p>12/1/13</p>
<p>Rule 7001(1) Compelling the debtor to deliver the value of property to the trustee</p>	<p>Suggestion 12-BK-D Judge S. Martin Teel, Jr.</p>	<p>3/12 - Committee discussed, referred to the Consumer Subcommittee 6/12 - Subcommittee considered 9/12 - Committee discussed, referred to subcommittee for further consideration 11/12 - Subcommittee considered 4/13 - Committee agenda</p>	
<p>Rules 7004(e), 7012, 9006(f) Provide that the deadline for responding to a summons runs from the date of service, not the date of issuance</p>	<p>Suggestion 11-BK-F Chief Judge Peter W. Bowie</p>	<p>9/11 - Committee discussed, referred to Business Subcommittee 12/11 - Subcommittee considered 3/12 - Committee approved publication of revised amendment to Rule 7004(e) 6/12 - Standing Committee approved publication 8/12 - Published for comment 4/13 - Committee agenda</p>	<p>12/1/14</p>

<p>Rules 7008, 7054 Finding that there is a gap in the procedure for requesting allowance of attorney's fees in adversary proceedings</p>	<p>Charlie Y, Inc., v. Carey B.A.P. 9th Cir. (Mar. 4, 2011)</p>	<p>4/11 - Committee discussed. Referred to Consumer and Business Subcommittees 7/11 - Consumer Subcommittee discussed 7/11 - Business Subcommittee discussed 9/11 - Committee approved publication 1/12 - Standing Committee approved publication as revised 8/12 - Published for comment 4/13 - Committee agenda</p>	<p>12/1/14</p>
<p>Rules 7008, 7012(b), 7016, 9027, 9033(a) Impact of decision in <i>Stern v. Marshall</i>, 131 S. Ct. 2594 (2011)</p>	<p>Committee proposal Suggestion 11-BK-I Judge Eric P. Kimball Suggestion 11-BK-K Judges Black, Goldgar, and Doyle Suggestion 11-BK-L Judge Arthur Gonzalez</p>	<p>9/11 - Committee discussed, referred to Business Subcommittee 3/12 - Subcommittee considered 3/12 - Committee approved publication 6/12 - Standing Committee approved publication 8/12 - Published for comment 2/13 - Subcommittee considered comments 4/13 - Committee agenda</p>	<p>12/1/14</p>
<p>Rules 7008, 7012 Provide for consent to final adjudication by the bankruptcy judge on part of the proceeding</p>	<p>Comment 12-BK-037 National Bankruptcy Conference</p>	<p>2/13 - Business Subcommittee discussed</p>	
<p>Rules 7008, 7012 Provide for treating Stern issues in pre-answer motions</p>	<p>Comment 12-BK-037 National Bankruptcy Conference</p>	<p>2/13 - Business Subcommittee discussed</p>	

Rules 7008, 7012, 9014, 9027 Impact of <i>Stern</i> decision	Suggestion 12-BK-L Judge Richard Schmidt	9/12 - Committee discussed, partially included in published amendments, no further action	
Rule 7008(b) Clarify pleading requirements to recover statutory attorney's fees	Suggestion 12-BK-L Judge Neil P. Olack	9/12 - Committee discussed, partially included in published amendments, no further action	

<p>New Rules 8001 - 8028 Revise Part VIII of the rules to modernize and more closely follow the Appellate Rules</p>	<p>Eric Brunstad Committee proposal</p>	<p>3/08 - Referred to Privacy, Public Access and Appeals Subcommittee 5/08, 8/08 - Subcommittee discussed 10/08 - Committee discussed 3/09 - Considered at open subcommittee meeting 3/09 - Committee discussed 6/09 - Subcommittee discussed comments at open meeting 9/09 - Subcommittee discussed comments at 2nd open meeting 10/09 - Report to committee 12/09 - Comments at 2nd open meeting incorporated in draft 2/10 - Subcommittee considered 4/10 - Committee received progress report 8/10, 9/10 - Subcommittee calls 9/10 - Report on Committee agenda 12/10, 2/11 - Subcommittee calls 4/11 - Discussed during joint meeting with Appellate Rules Committee 7/11 - Drafting group reviewed and revised the draft 9/11 - Committee discussed 12/1 - Report to Standing Committee 1/12, 3/12 - Subcommittee considered 3/12 - Committee approved publication of new Rules 6/12 - Standing Committee approved publication 8/12 - Published for comment 2/13, 3/13 - Subcommittee considered comments 4/13 - Committee agenda</p>	<p>12/1/14</p>
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<p>New Rule 8002 Permit district court to reopen time to file an appeal for someone who did not receive timely notice of the entry of the judgment, like FRAP 4(a)(6)</p>	<p>Comment 12-BK-033 Judge Christopher M. Klein</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8002 Clarify when judgment is entered, like FRAP 4(a)(7)</p>	<p>Comment 12-BK-033 Judge Christopher M. Klein</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8005 Withdrawal of election to have appeal heard by district court</p>	<p>Comment 12-BK-033 Judge Christopher M. Klein</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8006 Provide for the bankruptcy court to comment on the suitability for direct appeal when joint certification by all appellants and appellees</p>	<p>Comment 12-BK-033 Judge Christopher M. Klein</p>	<p>3/13 - Appeals subcommittee considered</p>	

<p>New Rule 8008, Rules 9023, 9024 Indicative rulings</p>	<p>Committee proposal</p>	<p>8/08 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/08 - Committee tentatively approved publication of new Rule 8007.1 and Rule 9024 amendment 3/09 - Rules 8007.1 and 9024 assigned to the Bull Pen 3/12 - Committee approved publication of revised Rules 9023 and 9024 amendments 6/12 - Standing Committee approved publication 8/12 - Published for comment 4/13 - Committee agenda</p>	<p>12/1/14</p>
<p>New Rule 8009 Allow the BAP or district court to deem the record of the proceeding in the bankruptcy court to be the record on appeal</p>	<p>Comment 12-BK-015 Judge Barry S. Schermer</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8011 The filing of briefs and appendices is effective when received by the clerk</p>	<p>Comment 12-BK-005 Judge Robert J. Kressel</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8020 Reference to “order” includes local rules</p>	<p>Comment 12-BK-033 Judge Christopher M. Klein</p>	<p>3/13 - Appeals subcommittee considered</p>	

<p>New Rule 8023 Include Rule 7041 safeguards for dismissal of appeals on objections to discharge</p>	<p>Comment 12-BK-008 National Conference of Bankruptcy Judges</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8023 Court approval of dismissal of appeal when the trustee is a party, see Rule 9019</p>	<p>Comment 12-BK-008 National Conference of Bankruptcy Judges</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>New Rule 8024 Specify when jurisdiction reverts in the bankruptcy court after an appeal</p>	<p>Comment 12-BK-008 National Conference of Bankruptcy Judges</p>	<p>3/13 - Appeals subcommittee considered</p>	
<p>8000 Rules Abolish BAPs, assign appeals to courts with low caseloads</p>	<p>Judge William G. Young</p>	<p>4/13 - Committee agenda</p>	
<p>Rule 9006(d) Delete as superfluous, not properly located in the Rules, and may create confusion</p> <p>Rules 9013, 9014</p>	<p>Suggestion 10-BK-D Judge Raymond T. Lyons</p> <p>Committee proposal</p>	<p>8/10 - Considered by the Subcommittee on Business Issues 9/10 - Committee approved amendments to Rules 9006, 9013, 9014 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference approved</p>	<p>12/1/13</p>

<p>Rule 9016, Director's Forms 254, 255, 256 Impact of proposed amendments to Civil Rules 37 and 45</p>	<p>Committee proposal</p>	<p>4/11 - Committee discussed, deferred until after civil rules are published 8/11 - Rules 37 and 45 published 9/11 - Bull Pen 12/11 - Subcommittee on Business Issues considered 3/12 - Committee considered, took no further action, Forms 254, 255, 256 to be updated before 9/13 meeting</p>	<p>12/1/13</p>
<p>Rule 9027 File notice of removal with bankruptcy clerk</p>	<p>Suggestion 11-BK-M Attorney Jim Spencer</p>	<p>3/12 - Committee discussed, referred to Subcommittee on Business Issues 7/12 - Subcommittee considered 9/12 - Committee considered, took no further action</p>	
<p>Rule 9033 The clerk should serve, not mail, proposed findings of fact and conclusions of law</p>	<p>Comment 12-BK-008 National Conference of Bankruptcy Judges</p>	<p>2/13 - Business subcommittee discussed</p>	
<p>New Rule, New Form Waiver of additional fees</p>	<p>Suggestion 11-BK-N Attorney David S. Yen</p>	<p>3/12 - Committee discussed, referred to Consumer Subcommittee 7/12 - Subcommittee considered 9/12 - Committee discussed, referred to subcommittee for further consideration 11/12 - Subcommittee considered 4/13 - Committee agenda</p>	

<p>New Rule Electronic Signatures</p>	<p>Forms Modernization Project</p>	<p>8/11 - Forms Modernization Project considered 9/11 - Committee discussed 1/12 - Subcommittee on Technology and Cross Border Insolvency considered 3/12 - Committee considered 7/12 - Subcommittee considered 1/12 - Standing Committee discussed 7/12 - Subcommittee discussed 9/12 - Committee considered, referred to subcommittee 12/12, 2/13 - Subcommittee considered 4/13 - Committee agenda</p>	
<p>New Rule Treatment of <i>Stern</i> issues in bankruptcy appeals</p>	<p>Suggestion 12-BK-H Professor Alan Resnick</p>	<p>7/12 - Subcommittee on Privacy, Public Access and Appeals considered 9/12 - Committee considered, to be reconsidered at a future meeting</p>	
<p>Official Form 1 Add checkboxes for 11 U.S.C. § 1116(1) documents</p>	<p>Suggestion 13-BK-B Judges Eric L. Frank and Bruce I. Fox</p>	<p>4/13 - Committee agenda</p>	
<p>Official Forms 1, 6C, 6E, 7, 10, 22A, 22C, Director's Forms 200, 283 Conform to the automatic dollar adjustments in 11 U.S.C. § 104(a)</p>	<p>Bankruptcy Judges Division, Admin Office</p>	<p>2/13 - Revised forms published 4/13 - Information item</p>	<p>4/1/13</p>

<p>Official Form 3B Exclude non-cash government assistance</p>	<p>Suggestion 12-BK-A Judge Michael J. Kaplan</p>	<p>3/12 - Committee considered, incorporated in Forms Modernization version of the form</p>	<p>12/13</p>
<p>Official Form 6C Extent of claimed exemption, <i>Schwab v. Reilly</i>, 130 S. Ct. 2652 (2010),</p>	<p>Judge Eugene Wedoff</p>	<p>7/09 - Consumer Subcommittee considered 10/09 - Committee discussed 4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee considered, referred to Consumer and Forms Subcommittees 10/10 - Subcommittees considered 4/11 - Committee approved 4-column version for publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 2/12 - Consumer and Forms Subcommittees considered comments 3/12 - Committee considered, withdrew the amendment without expressing an opinion on the emerging practice of writing in <i>Schwab</i> language on the current version of the form, referred to Forms Modernization 7/12 - Consumer and Forms Subcommittees considered 9/12 - Committee discussed, included in new Form 106D 1/13 - Standing Committee suggested revising draft form 2/13 - Joint subcommittees considered 4/13 - Committee agenda</p>	

<p>Forms 6I, 6J Separate debtors' business income and expenses from personal income and expenses</p>	<p>Suggestion 12-BK-F Robert B. Katz, Esq.</p>	<p>Referred to Forms Modernization Project</p>	
<p>Official Form 7 Add debtor's age</p>	<p>Suggestion 13-BK-A David W. Ostrander</p>	<p>4/13 - Committee agenda</p>	
<p>Official Forms 9C, 9D, 9E, 9E(Alt.), 9F, 9F(Alt.), 9G, 9H, 9I Encourage creditors to obtain proof of claim form courts' website</p>	<p>Suggestion 12-BK-B Matthew T. Loughney for Bankruptcy Noticing Working Group</p>	<p>3/12 - Committee discussed, referred to Forms Modernization</p>	
<p>Official Form 10 Provide a space for designating the amount of a general unsecured claim</p>	<p>Suggestion 11-BK-D Sabrina L. McKinney</p>	<p>9/11 - Committee discussed, referred to Forms and Consumer Subcommittees 1/12 - Subcommittees considered 3/12 - Committee considered, referred to Forms Modernization</p>	

<p>Official Forms 10(Attach. A) 10(Suppl. 1) 10(Suppl. 2) Input on new mortgage forms, desirability of including a complete loan history</p> <p>Rule 9009 Specify how Official Forms may be modified</p>	<p>Committee proposal</p>	<p>7/11 - Consumer and Forms subcommittees discussed 9/11 - Committee discussed, referred to Consumer and Forms Subcommittees 1/12 - Subcommittees discussed 3/12 - Committee discussed 7/12 - Consumer and Forms Subcommittees discussed 9/12 - Mortgage Forms Mini-Conference 9/12 - Committee discussed 12/12 - Consumer and Forms Subcommittees considered (see Form Plan Working Group for Rule 9009) 4/13 - Committee agenda</p>	
<p>Official Form 10(Attach. A) Treatment of escrow shortage</p>	<p>Suggestion 12-BK-C Judge Barry S. Schermer</p>	<p>3/12 - Committee discussed, referred to Mortgage Forms Mini-Conference 7/12 - Consumer and Forms Subcommittees considered 9/12 - Mortgage Forms Mini-Conference 9/12 - Committee discussed 12/12 - Consumer and Forms Subcommittees considered 4/13 - Committee agenda</p>	
<p>Official Form 22A Technical amendments to § 109(h)</p>		<p>3/12 - Committee discussed, oral reports at future meetings 9/12 - Committee discussed 4/13 - Committee agenda</p>	
<p>Official Form 22A Create a separate form for qualified military service exclusion</p>	<p>Unpublished 2.15.13 comment Carl Barnes, Best Case Software</p>	<p>3/13 - Forms Modernization discussed</p>	

<p>Official Forms 22A, 22C Deducting telecommunications expenses by debtor who is not self-employed</p>	<p>William J. Neild Comment 09-BK-032</p>	<p>4/10 - Committee discussed, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Forms Subcommittee 2/11- Subcommittee considered 4/11 - Committee approved, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 6/11 - Standing Committee approved publication 8/11 - Published for comment 2/12 - Subcommittee on Consumer Issues considered comments 3/12 - Committee approved, incorporated in the Forms Modernization version of Forms 22A and 22C</p>	
<p>Official Forms 22A, 22C Change in IRS allocation of internet services in National Standards and Local Standards</p>	<p>Mark Redmiles</p>	<p>9/11 - Committee discussed, referred to Subcommittee on Consumer Issues 12/11, 2/12 - Subcommittee considered 3/12 - Committee considered, incorporated in the Forms Modernization versions of Forms 22A and 22C</p>	
<p>Official Forms 22A, 22C Allow below-median income debtors to file shortened versions of the forms</p>	<p>Suggestion 11-BK-C Wendell J. Sherk</p>	<p>9/11 - Committee considered, referred to Forms Modernization Project 3/12 - Included in the Forms Modernization versions of Forms 22A and 22C</p>	

<p>Official Form 22C Calculation of projected disposable income under § 1325(b)(1), <i>Hamilton v. Lanning</i>, 130 S. Ct. 2464 (2010).</p>	<p>Committee Proposal</p>	<p>4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee approved, referred to subcommittees for final review 2/11- Subcommittees reviewed 6/11 - Standing Committee approved publication 8/11 - Published for comment 2/12 - Consumer and Forms Subcommittees considered comments 3/12 - Committee approved, incorporated in the Forms Modernization version of 22C 8/12 - Published for comment 4/13 - Committee agenda</p>	
<p>Official Form 23 Conform to amendment to Rule 1007(b)(7)</p>	<p>Committee proposal</p>	<p>9/10 - Committee discussed, referred to Forms Subcommittee for final review 2/11- Subcommittee reviewed 4/11 - Held in the Bullpen</p>	<p>12/1/13</p>

<p>New Form Form chapter 13 plan</p>	<p>Suggestion 10-BK-G Judge Margaret Mahoney</p> <p>Comment 10-BK-M States' Association of Bankruptcy Attorneys (SABA)</p>	<p>2/11 - Consumer and Forms Subcommittees discussed 4/11 - Assigned to Forms Subcommittee, with direction to present a proposal for advancing the recommendation at the September meeting 6/11 - Working group appointed 6/11, 8/11 - Working group discussed 8/11 - Judge Wedoff requested information on local model chapter 13 plans 9/11 - Committee discussed 1/12, 2/12 - Working group discussed 3/12 - Committee discussed 7/12, 8/12 - Working Group discussed 9/12 - Committee considered, referred to Working Group for further consideration 11/12, 1/13, 2/13 - Working Group considered 1/13 - Form Plan Mini- Conference considered 4/13 - Consumer and Forms Subcommittees considered 4/13 - Committee agenda</p>	
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<p>Official Forms Alternatives to paper-based format for forms; renumber Official Forms</p>	<p>Judge James D. Walker, Jr. Comment 06-BK-011 Judge Marvin Isgur Patricia Ketchum</p>	<p>9/06 - Committee will coordinate a study with the Administrative Office 8/07 - Discussion of how to organize the study 9/07 - Committee discussed and authorized chair to create group 1/08 - Organizational meeting for Forms Modernization Project 2008/2009/2010/2011/2012 - Forms Modernization Project continues work, meetings in January, June 9/10 - Statement of Financial Affairs drafting session 9/10 - Progress report on agenda 10/10 - Form 22 drafting session 4/11 - Progress report 9/11 - Committee approves publishing new individual financial forms 3/12 - Committee approved publication of revised Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, 22C-2 6/12 - Standing Committee approved publication 8/12 - Published for comment 9/12 - Committee considered remaining individual forms 8/12 to 1/13 - Drafting calls for non-individual forms 3/13 - Working Group considered comments on published forms 4/13 - Committee agenda</p>	<p>12/1/13 Forms 6I, 6J</p>
<p>Director's Forms 254, 255, 256 Conform to Civil Rule 45 amendment</p>	<p>Staff proposal See Rule 9016 above</p>	<p>3/12 - Staff to revise forms before September 2013 meeting</p>	<p>12/1/13</p>

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TABS 22-24

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Future meetings
New business
Adjourn

Items 22 – 24 will be oral reports.

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